BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 471 19 85

Bill H _____ S 281 Original bill & history ___C

H. Committee on Business & Labor			S. Committee on Labor & Employment		
Hearing Date(s)	3-22	___C	Hearing Date(s)	2-5	___C
	3-26	___C		2-9	___C
	_____	___C		2-14	___C
	_____	___C		2-20	___C
Date Out	3-26	___C			
	rpt 3-26			no rpt.	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE FINAL STATUS

1/29	INTRODUCED		
1/30	REFERRED TO LOCAL GOVERNMENT		
2/19	HEARING		
2/23	ON MOTION PRINTED/PLACED ON 2ND READING		
2/25	2ND READING PASS	32	15
2/27	3RD READING PASS	31	19
	TRANSMITTED TO HOUSE		
3/06	REFERRED TO LOCAL GOVERNMENT		
3/12	HEARING		
3/18	COMMITTEE REPORT-NO RECOMMENDATION		
3/22	2ND READING NOT CONCURRED	58	40
3/22	BILL KILLED		

SB 280 INTRODUCED BY B. WILLIAMS, ERNST
SUBJECTING GEMSTONE MINES TO GROSS PROCEEDS TAX

1/29	INTRODUCED		
1/30	REFERRED TO TAXATION		
1/31	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/12	HEARING		
3/08	COMMITTEE REPORT-BILL DO PASS		
3/11	2ND READING PASS AS AMENDED	42	3
3/13	3RD READING PASS	40	8
	TRANSMITTED TO HOUSE		
3/14	REFERRED TO TAXATION		
3/22	HEARING		
	DIED IN COMMITTEE		

SB 281 INTRODUCED BY FULLER, C. SMITH, J. BROWN, ET AL.
LIMIT LUMP-SUM WORKERS' COMPENSATION PAYMENT
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/30	INTRODUCED		
1/30	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/31	FISCAL NOTE REQUESTED		
2/05	HEARING		
2/05	FISCAL NOTE RECEIVED		
2/09	HEARING		
2/14	HEARING		
2/20	HEARING		
2/22	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/26	2ND READING PASS AS AMENDED	49	0
2/27	3RD READING PASS	50	0
	TRANSMITTED TO HOUSE		
3/06	REFERRED TO BUSINESS & LABOR		
3/22	HEARING		
3/26	COMMITTEE REPORT-BILL CONCURRED		
3/30	2ND READING CONCURRED	71	25
4/01	3RD READING CONCURRED	84	16
	RETURNED TO SENATE		
4/08	SIGNED BY PRESIDENT		
4/09	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		

SENATE FINAL STATUS

CHAPTER NUMBER 471 EFFECTIVE DATE: 4/15/85

SB 282 INTRODUCED BY FARRELL
LICENSE EXPIRATION DATES FOR SOCIAL WORKERS, SPEECH PATHOLOGISTS, AUDIOLOGY
BY REQUEST OF DEPARTMENT OF COMMERCE

1/30	INTRODUCED		
1/31	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/13	HEARING		
2/14	COMMITTEE REPORT-BILL DO PASS		
2/14	STATEMENT OF INTENT ATTACHED		
2/16	2ND READING PASS	47	0
2/19	3RD READING PASS	44	1
	TRANSMITTED TO HOUSE		
2/27	REFERRED TO STATE ADMINISTRATION		
3/20	HEARING		
3/20	COMMITTEE REPORT-BILL CONCURRED		
3/23	2ND READING CONCURRED	89	4
3/25	3RD READING CONCURRED	96	4
	RETURNED TO SENATE		
3/29	SIGNED BY PRESIDENT		
3/30	SIGNED BY SPEAKER		
3/30	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 307 EFFECTIVE DATE: 10/01/85		

SB 283 INTRODUCED BY GALT, NEUMAN
GENERALLY REVISE WATER DEVELOPMENT PROGRAM - ISSUE ANTICIPATION NOTES
BY REQUEST OF DEPT. OF NATURAL RESOURCES

1/30	INTRODUCED		
1/31	REFERRED TO NATURAL RESOURCES		
2/02	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/11	HEARING		
2/15	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/18	2ND READING PASS	50	0
2/20	3RD READING PASS	49	0
	TRANSMITTED TO HOUSE		
2/27	REFERRED TO NATURAL RESOURCES		
3/22	HEARING		
3/25	COMM REPORT-BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	98	0
4/01	3RD READING CONCURRED	99	0
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	50	0
4/05	3RD READING AMENDMENTS CONCURRED	45	0
4/12	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 512 EFFECTIVE DATE: 4/17/85		

LC 0722/01

Senate BILL NO. 281

INTRODUCED BY Fuller, Ellison, Jones, Halligan, Bryleck, Hagel, Christiaens, Mesaros, Himsl, E. Smith

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE AMOUNT OF A LUMP-SUM WORKERS' COMPENSATION PAYMENT TO THE PURCHASE PRICE OF AN ANNUITY THAT WOULD YIELD THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF THE COMPENSATION PERIOD; AMENDING SECTION 39-71-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments -- division approval required. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Regardless of the date of the injury or of a prior lump-sum payment, a lump sum awarded or paid after [the effective date of this act] may not exceed the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period. If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics.

(2) ~~Such~~ The conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and ~~shall~~ ~~rest~~ approval of the conversion rests in the discretion of the division~~,--both~~ as to what the purchase price of an annuity would be, the amount of ~~such~~ the lump-sum payment, and the advisability of ~~such~~ the conversion.

(3) The division ~~is hereby vested with~~ has full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.

(4) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination."

NEW SECTION. Section 2. Extension of authority. Any

INTRODUCED BILL
SB 281

existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Effective date. This act is effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. FNN 300-85

F I S C A L N O T E

Form BD-15

In compliance with a written request received January 31, 19 85 , there is hereby submitted a Fiscal Note for Senate Bill 281 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act limiting the amount of a lump sum workers' compensation payment to the purchase price of an annuity that would yield the bi-weekly benefits payable over the estimated duration of the compensation period; amending Section 39-71-741, MCA; and providing an immediate effective date."

ASSUMPTIONS:

A. Rates will increase approximately 12% in FY'86 and 12% in FY'87 because of the underlying factors in the system that are independent of the outcome of this bill (loss experience, decline in interest earnings, etc.). An actuarial determination on rate changes won't be made until two months prior to the beginning of a fiscal period.
B. Since the State Fund operates as a nonprofit entity revenues will match costs.
C. In order to take into account contingent liabilities on cases classified as permanent total disabilities, the State Fund will either award or reserve the undiscounted lump sum conversion of future biweekly benefits.
D. Impact on self insurers and private carriers is not included because the basis upon which to make an estimate is unavailable.
E. The number of claims classified as permanent total will increase due to the incentive added by the Willis case. The percentage of cases classified as permanent total will increase from 2.14% to 5% of all cases. This increase is 2.34 times the current number of permanent total cases.
F. The impact of the Willis case will be expressed in terms of rate increases in fiscal years 1986 and 1987, which would then stabilize for future years.
G. This analysis is based only on State Fund data. The State Fund currently has approximately 50% of the workers' compensation market in Montana.
H. Fiscal year 1980 will be used as a base year to determine the impact.
I. The increase in liabilities for cases occurring prior to July 1, 1985, will be recovered over a two-year period.
J. Total public sector employees are approximately 60,800, of which 14,000 are state employees.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 5, 1985

FN6:D/2

FISCAL IMPACT:

Impact On State Fund Premium:

	Premium Paid FY 84	Current Law as Affected By Willis Decision: FY 85 Estimated	FY 86 1.384%	FY 87 1.384%	Proposed Change Affected By SB281: FY 86 1.12%	FY 87 1.12%	Reduction Of Premium: FY 86	FY 87
PART A. State Government:								
General Fund	$ 1,271,239	$ 1,530,570	$ 2,206,983	$ 2,471,820	$ 1,594,641	$ 1,785,997	$ 612,342	$ 685,823
Special Rev.	1,460,579	1,758,536	2,535,695	2,839,980	1,832,150	2,052,008	703,545	787,972
Enterprise	62,718	75,512	108,833	121,948	78,673	88,113	30,160	33,835
Int. Serv.	154,134	185,577	267,589	299,700	193,345	216,546	74,244	83,154
Pension	7,691	9,259	13,350	14,951	9,646	10,803	3,704	4,148
Exp. Trust	2,074	2,496	3,598	4,030	2,600	2,912	998	1,118
University*	495,941	597,112	860,997	964,315	622,108	696,760	238,889	267,555
TOTAL	$ 3,454,376	$ 4,159,062	$ 5,997,045	$ 6,716,744	$ 4,333,163	$ 4,853,139	($ 1,663,882)	($1,863,605)
Net General Fund Savings:							($ 851,231)	($ 953,378)
Part B. All Other Employers Insured With State Fund:	$ 33,678,294	$ 44,066,599	$ 66,529,376	$ 75,650,063	$ 48,070,321	$ 54,660,450	($ 18,459,055)	($ 20,989,613
Total Estimate Premium	$ 37,032,670	$ 48,225,661	$ 72,526,421	$ 82,366,807	$ 52,403,484	$ 59,513,589	($ 20,122,937)	($ 22,852,218

* Due to the nature of the University System budget, these amounts can be considered General Fund.

LOCAL GOVERNMENT IMPACT:

Local governments would also receive reduced workers' compensation premiums of approximately $10.2 million over the biennium. This savings would be distributed between cities, counties and school districts in proportion to their payroll and accident history.

IMPACT ON STATE REVENUES:

If Senate Bill 281 does not pass, the premium for all private sector employers will increase by approximately $74 million over the biennium. Because premiums are deducted as a business expense, Montana corporate and individual income tax receipts will be reduced. The dollar amount cannot be estimated.

CHAIRMAN--LYNCH, J. D.
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: TU-TH-SAT TIME: 1:00-3:00 P.M.

SECRETARY-DAILY, BETH

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION		REREFERRED TO COMM---	DATE OUT
SB0281	1/30	2/20	2/5, 2/9, 2/14, 2/21	PASS AS AMENDED			2/20
FULLER, DAVID E.			LIMIT LUMP-SUM WORKERS' COMPENSATION PAYMENT				
SB0337	2/07	2/12	2/12	DO PASS			2/12
BLAYLOCK, CHET			CHANGE METHOD OF COLLECTING UNPAID UNEMPLOYMENT COMPENSATION CONTRIBUTIONS				
SB0341	2/07	2/12	2/12	PASS AS AMENDED			2/12
HAFFEY, JACK			AUTHORIZES CHANGE IN WORKING HOURS OF PRISON EMPLOYEES				
SB0356	2/08	2/19	2/22, 2/19, 2/21	PASS AS AMENDED			2/22
STEPHENS, STAN			WORKERS' COMP. EXEMPTION; INDEPENDENT CONTRACTOR WITH NEWSPAPER				
SB0362	2/08	2/19	2/21	DO PASS			2/21
HAFFEY, JACK			RAISE MINIMUM WAGE TO $3.05 10-1-85, TO FEDERAL MINIMUM RATE ON 10-1-86				
SB0393	2/12	2/19	2/22, 2/19	ADVERSE REPORT			2/22
KEATING, THOMAS F.			ABOLISHING LABOR APPEALS BD.; REVISING UNEMPLOYMENT COMP. BENEFIT PROVISIONS				
SB0402	2/13	2/21	2/22, 2/21	PASS AS AMENDED			2/22
FULLER, DAVID E.			AUTHORIZE CERTAIN WORKERS' COMPENSATION LUMP-SUM SETTLEMENTS				
SB0409	2/14	2/21	2/22, 2/21	PASS AS AMENDED			2/22
FARRELL, WILLIAM E.			WORKERS' COMPENSATION MEDICAL EXAMS AND EXPENSES				
SB0430	2/16	2/21	2/22, 2/21	ADVERSE REPORT			2/22
TOWE, THOMAS E.			MONTANA COAL MINE SAFETY ACT OF 1985				
SB0440	2/16	2/21	2/22, 2/21	PASS AS AMENDED			2/22
WILLIAMS, BOB			ALLOW EMPLOYERS TO OPERATE AS SELF-INSURED UNDER WORKERS' COMPENSATION ACT				
SB0447	2/19	2/21	2/22, 2/21	DO PASS			2/22
MANNING, RICHARD E.			SUITABLE WORK FOR UNEMPLOYMENT COMP. PURPOSES, CONFORM STATE TO FED. LAW				

COURTESY OF THE
State Law Library
of Montana

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 5, 1985

The eighth meeting of the Labor and Employment Relations Committee was called to order by Chairman J.D. Lynch on February 5, 1985, at 1:00 p.m. in Room 413/415, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 281:

Chairman Lynch called on Senator Dave Fuller, sponsor of Senate Bill 281. Senator Fuller said Senate Bill 281 is not a bill that makes a decision about what is just and fair in terms of our workers' compensation program. He thinks that's an issue the legislature must deal with, but Senate Bill 281 in his judgement is not doing that; at least that is not his motivation. Workers' compensation is one of the complex public policy questions that we face in the legislature. Senate Bill 281 is the appropriate mechanism that we take to deal with the Willis Decision. The Willis Decision changed the policy of discounting lump-sum payments. The immediate impact of that from the aspect of the department division was to raise the question of what that does to our trust fund? They would receive an immediate 10-15% increase in premiums. We should put things back to where they were, with lump-sum payments discounted. The impact on private employers if Senate Bill 281 is passed will be $74 million. That's devastating.

PROPONENTS OF SENATE BILL 281:

Gary Blewett, Administrator of the Workers' Compensation Division, Department of Labor and Industry, submitted written testimony.
(Exhibit No. 1)

David Hunter, Budget Director, Office of Budget and Program Planning, gave the fiscal note and went over where the figures came from. The total impact in the state of Montana, public and private, of not passing this bill is about $86 million -- an increase in workers' compensation premiums. $10.2 million of that impact is to cities, counties, and school districts. Passing this bill will reduce their premiums by that much. Impact on state revenue is $74 million in increased workers' compensation premiums for private sector employers in the state of Montana.

Wallace Jordt, representing Jordt Logging, said his company has gone through four years of bad market and slow markets, with lumber prices down and adjusting downhill. He said

they must do something and it's not to pay, because they can't pay any more. "What do you drop first?" he asked. "You drop your insurance. You're going to get people going away from insurance; you're not going to have workers' compensation if you're awarding a few at the expense of many."

Jerry Okonski, Logging Systems, Inc., based in Libby, submitted written testimony.
(Exhibit No. 4)

Bud Clinich, representing Montana Logging Association as its safety director, submitted written testimony.
(Exhibit No. 5)

Ben Havadahl, representing Montana Motor Carriers Association, rose in support of Senate Bill 281.

Forrest Boles, representing and president of Montana Chamber of Commerce and Billings Chamber of Commerce, said the cost of an employer maintaining a job is going up. The employers recognize that unemployment insurance costs are going to increase, other fringe benefit costs are going to increase, workers' compensation costs have increased, and the prospect is for higher increases. Senate Bill 281 offers opportunity to have a direct and dramatic positive impact on the job creation atmosphere in this state. He encouraged support of Senate Bill 281.

Don Allen, representing Montana Wood Products Association and Montana Hospital Association, expressed concern over rising health costs. If this bill is given a Do Pass, it will add a burden to the health care costs.

Riley Johnson, representing Montana Homebuilders Association, National Federation of Independent Business, and Professional Insurance Agents, said these groups support Senate Bill 218 because they are at a breaking point. He spoke as an individual business owner who has cut his work force, because of the overhead of unemployment workers' compensation, in half over the last year.

George Wood, Executive Secretary of the Montana Self Insurers Association, said the association feels this bill is a very moderate approach to an acute problem--the payment of projected future weekly wage loss in lump-sums. There should be some type of legislation to limit the amount of lump-sums and the cost of lump-sums. He requested the committee report this bill Do Pass.

Irwin Dellinger, representing Montana Building Material

Dealers Association, said the association is protected by a private carrier. He urged a Do Pass on Senate Bill 281.

Roger McGlenn, representing Independent Insurance Agents of Montana, said if passage of this bill is not taken by this legislative session there will be continued adverse effects to workers' compensation coverage availability and affordability. He strongly urged the committee to support this bill.

George Allen, representing the Montana Retail Association, rose in support of Senate Bill 281.

Pat Underwood, Executive Vice-President of the Montana Farm Bureau, strongly supports Senate Bill 281.

Bonnie Tippy, representing the Alliance of American Insurers, a private workers' compensation insurance association, strongly supports Senate Bill 281.

Glen Drake, representing American Insurance Association, had figures that show independent insurers and private carriers insure approximately 29% of the employers in the state and the state fund insures approximately 71%.

OPPONENTS OF SENATE BILL 281

Mark Connell, a lawyer from Missoula, said he represented Henry Willis in this case. He said the workers' compensation system was designed to protect people who are employed by industry when they become disabled and crippled by industry.

Mr. Willis, who was a construction worker and was crippled on the job in 1979, was 37 years old. Mr. Willis has a history of doing heavy manual labor. He has suffered tremendously as a result of this accident. Mr. Connell talked about some actual figures as they apply to people like Henry Willis. At the time he went to trial in 1982, he had a life expectancy of approximately 38 years. Mr. Willis, under the workers' compensation statute, is now entitled to $155 per week until he turns 65; then he is entitled to $198 per week for the rest of his life.

Mr. Willis went to court over whether or not he is entitled to a lump-sum of his benefits rather than have those benefits be paid out over the future each week. What this bill will do, now, is to tell Henry Willis, "Henry, the lump-sum that you are entitled to is $68,000."

At the time of the trial, an annuity paying out comparable benefits to Mr. Willis can be purchased for $68,000. At the

same time, the amount of Mr. Willis' benefits under the workers' compensation system were they to be paid out over time, totaled approximately $331,000. This bill will tell Henry Willis, "in lieu of paying you $331,000 over your life expectancy, we will pay you $68,000 today." This is the effect of this bill. Mr. Willis could have made $21,000 per year, approximately, had he not been insured. Mr. Willis netted out of this settlement, at that time, a lump-sum of approximately $198,000; that is how much the workers' compensation will pay this man for what's been taken away from him by his injuries. This injury has taken $800,000 out of the pocket of Henry Willis; this bill will give him $68,000 in return. The $193,000 that Mr. Willis will receive totals, when you figure his life expectancy, approximately $5,000 per year. In the course of Mr. Willis' employment, he lost $21,000. He will get $5,000 for the rest of his life. Under the prior law, as interpreted by the Supreme Court, the proper net measure of compensation for Mr. Willis in this case is $193,000; this bill will make it $68,000. Under workers' compensation laws, one only receives a fraction of what one's wages were in the first place. You get approximately two-thirds of your wages subject to a maximum allowed by law. In Willis' case it was $198 per week.

Daniel Shea, formerly with the Montana Supreme Court, lawyer and author of the Willis decision, said that between 1975 and 1984, the legislature eliminated the last 2% discount factor from the statute saying they didn't want a discount. Until 1984, when the Willis Decision was decided, the State of Montana and the insurance industry had totally ignored this statute. Once the legislature, in 1975, eliminated the discount factor, that meant that in the future, after the legislation became effective, if there were a lump-sum settlement, whether in full or in part, it could not be discounted at present value. And yet, that has not been the practice of the State of Montana or the insurance industry. So for nine years what has really happened in worker settlements is that they have been deprived of the benefits to which they are entitled. He referred to page 2057 and said that he does not hold that the claimant is entitled as a matter of right to the entire undiscounted sum of $331,000. Rather, the trial court, which is the workers' compensation court, must determine under section 39-71-741 whether the claimants' best interests would be served by either a full lump-sum payment or a partial lump-sum payment with the remainder to be paid out in regular biweekly payments.

That statute permits the division, or if there is a dispute, the workers' compensation judge, to determine whether there is going to be any kind of a lump-sum settlement. It's not

a matter of right, all claimants who are injured don't have a right to a lump-sum settlement. The division can disagree, and if they disagree then it can become a case that is brought before workers' compensation courts. Then the workers' compensation courts can do one of three things: 1) Decide the worker is not entitled to a lump-sum settlement at all; 2) give the worker a partial lump-sum settlement; 3) Decide the worker is entitled to an entire lump-sum settlement. Those options exist at the discretion the workers' compensation court.

Mr. Shea said the governor has created a blue ribbon committee, apparently to look into the whole workers' compensation system, not just the effects of the Willis case. If the workers' compensation laws need to be revamped, Mr. Shea suggested not doing it on a piecemeal basis. He asked the committee to let this interim committee act, let them determine what the situation is, let them find out what the facts are. He asked the committee to defer any consideration to kill the present bill and simply instead defer it to this blue ribbon standing committee for further study.

Dick Bottomly, lawyer, farmer, rancher and employer, gave the committee an example of what this bill is going to do to a worker who loses his hand: If the man is making $16.00 an hour in a 40-hour week, he therefore is making $640.00 a week. Multiply that by 52 weeks and it gives him an annual salary of about $33,000. Multiply that by 20 years, and that gives $667,000 of just actual wages that that man would earn over his life expectancy. That has nothing to do with his benefits or any other benefits he receives. Under this bill, a hand is worth $200 a week. If he is getting the maximum amount in 1984, that's $4,138.50 permanent partial times the number of weeks, which gives a figure of $27,000. With $27,000 without discount, he can't work again. If the man receives an annuity discounted at 1/3, that man is going to receive $9,200 for the loss of his hand, under workers' compensation under this act. The Workers' Compensation Act was designed to protect the employers, not employees.

Tom Boland, who practices law in Great Falls and represents injured workers, submitted an article from the Western Business Newspaper. The article is an ad from Hoiness LaBar FBS Insurance of Montana, one of the largest insurance companies in Montana. This is a major insurance agency, owned by a major bank. Recently it was purchased by one of the largest bank holding companies that function in the state of Montana -- the First Bank system. Mr. Boland said he doesn't think the knowledgeable insurance agents and those low premiums are leaving the state of Montana because

of the Willis Decision.
(Exhibit No. 6)

Gene Peacott, lawyer, said that the question of this hearing is, how do they get the committee's attention, how do they get them thinking about this in depth, that a) the insurance industry is going to go broke; b) the state fund is going to go broke; c) a lot of unworthy, irresponsible, drunken workers are going to receive a windfall, which they should not have. This bill will do away with lump-sum settlements. People who are out here in the marketplace who are productive are going to pay to support, raise and educate families of these injured workers who are not productive anymore. If they get anything it is going to be from the taxpayers. That is a common sense perception as far as the effects of this bill are concerned.

C.L. Overfelt, attorney from Great Falls, said if the committee passes this bill, insurance companies won't leave the state. There will be an influx of insurance agents coming in here to sell annuities because that's what this bill is. He asked the committee to consider an amendment; if the committee discounts it, they should discount it to a present value and leave off this business about an annuity.

Lon Daylen, attorney from Missoula, said we need a study commission to look at this thing in depth because there are some serious problems with the proposed Senate Bill 281. He pointed out the language in line 18-20 that reads, regardless of the date of injury or of a prior lump-sum payment, a lump-sum award is awarded or paid after the date of this act. There is a constitutional problem in article 2, section 31 of the Montana Constitution. Mr. Daylen supports Justice Shea's remarks in support of a study commission.

Don Judge, representing Montana State AFL-CIO, submitted written testimony. (Exhibit No. 7)

Larry Persinger, representing the Montana State Building and Construction Trades Council, spoke in opposition to Senate Bill 281. He asked the committee not to support the bill as currently written.

Joe Bottomly remarked that people say this bill is greased. He offered amendments. (Exhibit No. 8) He said the one amendment that is very important is the one to eliminate the bill's applicability to permanent partial codes. Permanent total means that person can't get any job and permanent partial means that person may have made $16 an hour as a logger, and now he can get $4 an hour as a clerk.

Monty Beck, attorney from Bozeman, pointed out one provision in the bill which seems to give a tremendous amount of power to the administrator of the Workers' Compensation Division. Part 2 of the bill allows the approval of the conversion to an annuity left to the discretion of the division as to 1) what the purchase price of an annuity would be; 2) the amount of the lump-sum payment; 3) advisability of the conversion.

Joe Rossman, representing the Joint Council of Teamsters, rose in opposition to Senate Bill 281.

James Mular, representing BRO of Railways and Airline Clerks, submitted written testimony. (Exhibit No. 9)

QUESTIONS FROM THE COMMITTEE:

Senator Towe asked Gary Blewett if the cost of living was included in this. Gary Blewett replied the law provided bi-weekly payments and also fixed amounts.

Senator Haffey asked Gary Blewett whether an individual had to make lump-sum payments or could choose not to. Gary Blewett said he has to approve or disapprove, but cannot abuse the decision.

Senator Fuller closed on SB 281, stating there is a need for a study commission.

The hearing was closed on SB 281.

ADJOURNMENT: The committee, having no further business, adjourned at 2:55 p.m.

J. D. Lynch

Committee Chairman

EXHIBIT NO. 1
2/5/85

TESTIMONY ON SB 231
Before the Senate Labor and Employment Relations Committee

By

Gary Blewett, Administrator
Workers' Compensation Division
Department of Labor & Industry

The Department of Labor and Industry requests an amendment to Section 39-71-741, MCA, to allow a claimant's future biweekly benefits to be converted to a lump sum at present value. This bill specifies the method of determining present value to be the purchase price of an annuity that would yield the biweekly benefits due the claimant. The bill also specifies the table to be used to estimate expected remaining life of a claimant.

Section 39-71-740, MCA, says, "All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein." Section 39-71-741, the section proposed to be amended by this bill, allows for settlement, compromises of compensation, and conversion of biweekly payments into a lump-sum payment.

The method the State Compensation Insurance Fund has used for several years to convert future biweekly payments to a lump sum was contested in the case of Willis vs. the State Fund. The Workers' Compensation Court tried the case and found in favor of the State Fund. The claimant appealed the case, and the Montana Supreme Court, in a 4 to 3 decision, reversed the Workers' Compensation Court and decided in favor of the claimant.

The Supreme Court's decision came down on November 1, 1984 and held, "...that when a lump-sum payment is ordered under section 39-71-741, MCA, it cannot be discounted to present value." This decision entirely changes the basis upon which the State Fund charges premium to employers. Previously, premium was based on the assumption that biweekly payments would be funded through a combination of premium paid by employers and interest earnings from investments. In the alternative, lump-sum settlements would take into account the loss of further interest earnings by discounting future payments to present value. This had the effect of keeping premium costs unchanged whether a claimant was paid biweekly or in a lump sum.

If the law remains as the Supreme Court decided in the Willis case, the cost of premium to employers has to increase because of the lost interest earnings from investments.

Furthermore, because the workers' compensation law fixes the amount of biweekly payments to a percentage of wages at the time of an accident and does not allow for inflationary increases, it would always be to a claimant's advantage to convert future benefits to an undiscounted lump sum to protect against inflationary erosion of the value of future payments. Therefore, we would expect more lump-sum conversions than we presently experience which further adds to the cost of premium. The State Fund raised its rates by 15% on January 1, 1985, to begin the process of adjusting premium to meet the new cost. The fiscal note with this bill indicates an eventual 38% increase in premium due to the law as it is presently defined according to the Willis decision.

The Supreme Court made its decision in the Willis case based on its understanding of legislative intent. The Court's evaluation of legislative intent includes the history of legislated changes in the law, the reported practice of private insurance companies and self-insurers in 1975 at the time of the last amendment to this section of law, and the testimony before the House and Senate committees in 1975. (See Willis decision beginning on page 4).

The Department of Labor and Industry proposes this legislation for 4 reasons:

(1.) We believe that this section of law should be amended to express explicitly the practice and opportunity that insurers believed existed from 1975 through November 1, 1984, when the Willis decision came down. We have done this to give the current legislature the opportunity to either endorse the Supreme Court's interpretation of the law as it is currently written by turning down this bill or to clarify the law with new language.

It is not the intent of this bill to limit the wage loss benefits of injured workers. Its intent is to reestablish the method by which lump-sum payments were made prior to the court's decision in Willis. This bill would apply to lump sums for both permanent total cases and permanent partial cases for all insurers and self-insurers. While it was the State Fund's previous practice to apply a present value conversion only on permanent total cases, we are told that it was the practice among private insurers and self-insurers to include permanent partial cases as well. Therefore, this bill make no distinction between these two classes of benefits for purposes of lump-sum conversion.

(2.) We have also requested this amendment because of the cost to Montana's employers both public and private. A cost increase of this magnitude should not be left to a split decision in the Supreme Court. It is a cost that should be legislatively determined if it is to continue.

(3.) We have also made this a legislative issue because the law as defined in the Willis case establishes, de facto, a new order of benefit by way of the undiscounted lump sum. The amount of money to a claimant increases enormously now as was so clearly pointed out in the Supreme Court's dissenting opinion. (See Willis decision page 13). The Legislature should have the opportunity to determine whether a claimant is to be eligible for an amount that can produce both lifetime biweekly payments and a large lump sum.

(4.) Finally, we have requested this legislation as an opportunity to buy time while a myriad of workers' compensation issues are sorted out over the next two years leading, we hope, to an omnibus bill in the next session. We are concerned that there are inequities and confusion in current law that need to be overcome through rational discussion and involvement of all interested parties. The inequities are varied and perceived differently by both employees and employers. Governor Schwinden has addressed this concern by appointing an 18-member advisory council to conduct a comprehensive study of workers' compensation laws, including the court decisions that define them, and to recommend proposed legislation for the 50th Legislature that balances the interests and concerns of all who are involved.

The proposed changes in SB281 are not intended as a complete solution to workers' compensation issues surrounding the method of paying benefits. It is an interim solution that will prevent what we perceive to be a radical change in the system while more careful revisions can be sorted out through the advisory council.

Exhibit 3

MONTANA LOGGING ASSOCIATION

P.O. Box 1716
Kalispell, Montana 59903-1716
406-755-3185

SB 281--testimony submitted on 2-5-85

Mr. Chairman, members of the committee.

My name is Keith Olson. I am employed as the executive director of the Montana Logging Association. I reside in Kalispell.

Our organization represents over 500 independent logging contractors from throughout the timbered regions of Montana and, because our average member has seven employees, we are small businessmen.

We rise in support of SB 281 because we are terribly concerned that Montana's workers' compensation system is on the verge of collapse.

Before I pursue that any further, allow me to put into perspective exactly where the logging industry fits into the workers' compensation system.

Today, the workers' compensation rate for:

(1)	secretaries is	$ 0.37/$100 of payroll
(2)	salesmen is	$ 0.81/$100 of payroll
(3)	shop mechanics is	$ 5.06/$100 of payroll
(4)	road builders is	$ 9.03/$100 of payroll
(5)	loggers is	$24.90/$100 of payroll

One of the reasons our work comp rate is so high is because the timber industry is inherently dangerous and even though we endeavor to minimize the risks associated with working in the woods, eliminating those risks is next to impossible.

However, danger is not the only factor which effects work comp rates. Allow me to illustrate:

Following are the work comp rates for logging (classification code 2702) in each of the last 5 years.

July of 1980	$18.85/$100 of payroll
July of 1981	$19.85/$100 of payroll
July of 1982	$19.55/$100 of payroll
July of 1983	$20.35/$100 of payroll
July of 1984	$21.65/$100 of payroll
January of 1985	$24.90/$100 of payroll

In the 5 year period, July '80/July of '84, our work comp rate rose $2.80/$100 of payroll.

In the six month period, July '84/January '85, our work comp rate rose $3.25/ $100 of payroll.

Actually, our work comp rate went up more in one day (Dec. 31,'84/Jan. 1,'85) than it had in the 5 previous years.

And did it go up because logging was all of the sudden more dangerous? No, it went up because of a Supreme Court decision.

That increase alone will increase an employers cost of workers' compensation insurance for an employee making $20,000/year in the logging industry from $4,330/year to $4,980/year--an increase of $650/year per employee.

And now we learn that should SB 281 ~~xxx~~ pass we will still face another 12 percent July 1 of this year. Should that happen the cost of workers' compensation insurance for an employee making $20,000/year in the logging industry would escalate another $650/employee per year. Should SB 281 Fail, we will experience a 33% increase on July 1, '85.

Enough of the mind-boggling statistics gentlemen, the point is this: we cannot afford it!

Last week Champion announced that they had closed down 8 mills on the west coast, permanently eliminating 2,000 jobs. We can feel fortunate that none of the cutbacks affected Montana operations. I bring this up only to stress that the timber industry is not healthy at this point in time.

Since Senator Lynch and Senator Haffey are the only members of this committee who reside west of the continental divide, it may be appropriate to relate that the timber industry comprises 50% of the economy of Montana's seven western counties.

As logging contractors, we cannot simply pass increased logging costs on to consumers. At the same time you increase our operating costs, the price of lumber may have dropped on the national market--or worse yet, we may have lost another share of our traditional market to Canadian lumber imports.

So what are our alternatives? Are we to either shut down and lay-off our employees, or are we to ask them to take a cut in pay? The Willis decision was, indeed, a sad one for the working man.

Mr. Chairman, members of the committee, that brings me back to the solvency of Montana's workers' compensation system.

The ability of any system designed to provide benefits is only as good as the solvency of those funding the system.

In this case, the Willis decision handed down by our Supreme Court threatens the solvency of many employers; especially those of us in basic industries like logging, because the only way insurance companies can bolster their reserve accounts is a percentage increase in rates; however, a 15% increase in work comp insurance for a secretary amounts to only $0.12/$100 of payroll; the same percentage for a logger amounts to $3.75/$100 of payroll.

There is no doubt that the Willis decision provided a financial windfall for one injured employee; and the members of the Trial Lawyers Association have been doing cartwheels across the state ever since; however, should SB 281 fail to pass, we sincerely fear insufficient funds will exist in work comp reserve accounts for future employees unfortunate enough to be injured in an industrial accident.

In closing, allow me one further concern of our membership. We have long endeavored to define that gray area which distinguishes a prime contractor/subcontractor relationship from an employer/employee relationship.

If employment costs continue to escalate, we respectfully fear you will once again see that distinction begin to gray, as more and more employers seek ways to avoid payroll costs.

Mr. Chairman, members of the committee, thank you for your indulgence and please move a do pass recommendation for SB 281.

EXHIBIT 2
2/5/85

MONTANA LOGGING ASSOCIATION

P.O. Box 1716
Kalispell, Montana 59903-1716
406-755-3185

SB 281- - testimony submitted 2-5-85

Mr. Chairman, members of the committee.

My name is Bud Clinch. I am employed by the Montana Logging Association as safety director. I reside in Kalispell, but the travels associated with my responsibilities take me to Roundup, Big Sky, Hamilton, Superior, Libby, Eureka, and all the places in between.

Within the association I specifically provide loss-control services intended to minimize logging related accidents and hopefully the cost of workers' compensation insurance.

It has long been our understanding that the most effective way to combat the high cost of workers' compensation was through a concerted effort to reduce accidents. Obviously a substantial reduction in the number of accidents would have a favorable effect on reducing the rates.

Hence the inception of the Montana Logging Association's loss-control program. Currently about 350 member firms subscribe to the MLA's program.

The program is a multitude of services including:

First-Aid and CPR training. Last year over 200 employees received such training.

Hearing conservation testing. In our second year of implementation we are expect another 500 employees to undergo the testing to detect early signs of hearing loss.

Safety meetings. During the 100 plus on the job visitations that I annually make, safety and accident prevention and cost is stressed.

Workers' Compensation Seminars. We are looking forward to our fourth annual series of seminars to acquaint the managers with the workings of the workers' compensation system.

Through mailings and newsletters we promote the acceptance and use of important safety equipment.

Safety consultations of computer print-outs of members workers' compensation claims gives insight into the high cost of medical treatment and disability benefits.

Our members participate in this program because they have a strong commitment to their employees. With the average crew size around seven, a near family relationship exist among logging crew members.

With over two years of implementation behind us, we feel the results of the program are just beginning to materialize.

The frequency of accidents is reduced. Technology has produce significantly safer logging equipment and our promotions have reached the majority of the logging community.

However, the costs of workers' compensation continues to rise.

During the computer print-out review process I mentioned earlier, I'm often confronted with claims taht may total more than the combined yearly salaries of the entire crew-a figure which may exceen $100,000.

More and more as I travel about the state visiting loggers, I am confronted by disgruntled employers.

These are progressive employers and strong supporters of the loss-control program who have gone the full route for their employees.

-They pay to have the crew attend first aid training

-They pay to comply with the OSHA hearing conservation ammendment

-They pay to provide safety equipment such as chaps, ear plugs, etc.

-They pay to equip their vehicles with expensive two-way radios and may subscribe to a mountain top repeater system to provide communication to the most remote locations in the event of an emergency

-They may offer a safety bonus or incentive system to reward "safe employees".

-They may pay or share the costs of a family medical plan.

ALL THESE EFFORTS AIMED AT PROTECTING THE EMPLOYEE-TO PROVIDE A SAFE WORK PLACE-AND TO PROVIDE AN INCENTIVE TO BE A SAFE EMPLOYEE. AND MAYBE, JUST MAYBE, REDUCE THE WORK COMP RATE! ! !

I stress these efforts because I feel our members have done all that can be expected for their employees.

Factors outside their control continue to escalate their rates. If its not the spiriling medical costs, its the liberal awarding of benefits to anyone who request them, and lets not forget the influence of attorney fees. And now the Willis decision threatens the solvency of the entire system.

Please pardom me for rambling on so-but I speak out of frustration. You see, the only means of evaluating our program is through analysis of the total cost of workers' compensation claims. While I strive to shave dollars from the cost colums by minimizing accidents, the supreme court slaps us with 15% increase and possibly more by awarding more liberal benefits.

I'm groping for some answers, maybe some equity. When tomorrow dawns, I'll be back out in the brush-visiting another logging contractor-critiquing his operation and promoting safety.

Perhaps I'll make some constructive suggestions. Maybe I'll warn the crew of some overlooked potential dangers. I'll check the condition of equipment, the coordination of men and machines, first-aid supplies, radio communications, and various safety equipment.

Inevitably we'll discuss past accidents and workers' compensation claims.

I'll probably hear at least one account of a past employee receiving excessive benefits-for an injury that is questioned as to whether it even occured on the job.

I'll make my plug for hiring and retaining only the best of men. I'll suggest continued involvement with the loss-control program in hopes of checking the runaway rates.

Then I'll hear of the loggers' plight. Something like 1975 prices and 1984 costs, with nothing but increased costs in sight. I'll shake my head in approval.

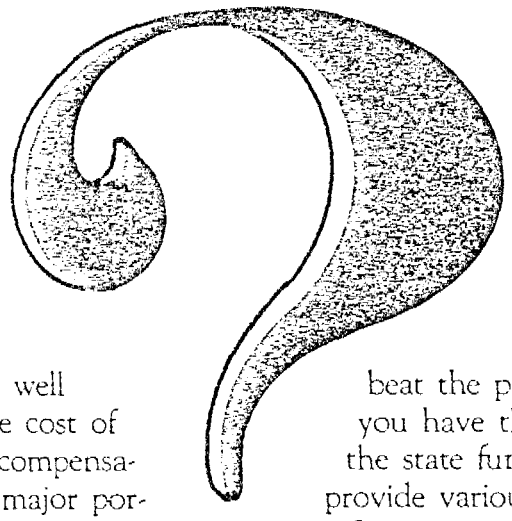
As mentioned earlier, the emphasis of our "safety program" is to encourage employers to <u>invest</u> in safety. It takes money to invest.

When there's barely enough money to pay the crew's salary, its futile to expect the niceties like paid training sessions, hearing testing, and safety equipment.

Quite honestly, the rising costs associated with providing employment are making my sales promotion of safety even more difficult.

It's with this appeal that I request a <u>do pass</u> recommendation for SB 281.

Are you paying too much for Workers' Compensation



As you well know, the cost of workers' compensation is a major portion of your business insurance expense. We can probably reduce that cost.

Hoiness LaBar-FBS Insurance Montana can compete with and, in most cases, beat the program you have through the state fund. We provide various cash flow programs and loss control assistance to further reduce your workers' compensation costs. Call us. We can increase your cash flow.

Hoiness LaBar FBS Insurance Montana
Since 1921

2323 2nd Avenue North, Billings, Montana 245-6511

Exhibit No 1
2/5/85

MONTANA STATE AFL-CIO
APRIL 29 1936

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 281, HEARINGS BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, FEBRUARY 5, 1985

I am Don Judge, representing the Montana State AFL-CIO. We are here to offer comments on Senate Bill 281, and other possible revisions to Montana's workers' compensation law.

The case of Henry Willis vs. the Long Construction Company and the Montana State Compensation Insurance Fund has dramatically highlighted a basic inequity in our workers' compensation law. Senate Bill 281 seeks to protect employers from potentially high premiums caused by lump-sum payments based on future benefit costs. However, another point must be made from an examination of the conclusions of this case. As has been argued previously before Montana legislators, benefits that are paid to totally disabled workers based on a percentage of that workers' income at the time of injury is blatantly unfair. The annual rate of inflation robs dollars out of that worker's pocket each subsequent year. There is currently no means of adjusting these benefit claims to meet true living costs.

As you know, workers traded their right to sue an employer for damages in return for the certain delivery of benefits in an amount which would provide at least a minimal level of support while that worker is unable to work due to injury.

We believe that it makes no sense to create a situation where premiums get so high that employers are forced out of business while attempting to provide adequate workers' compensation insurance.

However, we also believe that workers have a basic right to adequate benefits.

Senate Bill 281 only seeks to address one side of the problem that is before this committee -- the side of the employer. What about the gross inequity facing the injured worker?

Mr. Chairman, Members of the Committee -- we recommend that today you take no action on this bill. Wait to act on this proposal until all the bills introduced to modify this important law are before you. We believe that the workers of this state will benefit most from a law that is fair to employers as well as to workers. That can only be accomplished when the inequity of freezing total disability benefits forever at the original computation rate receives equal consideration as the bill before you.

Thank you for your consideration.

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

The tenth meeting of the Labor and Employment Relations Committee was called to order at 1:00 p.m. on February 9, 1985, by Chairman Senator J.D. Lynch in room 325 of the Capitol.

ROLL CALL: All members were present.

FURTHER CONSIDERATION OF SENATE BILL 281:

Senator Thayer asked which cases are eligible for lump-sum settlements and which are not. Norman Grossfield answered most lump-sum settlements deal with permanent partial disability. Lump-sum settlements are appropriate to get the cases ended. You can always justify the need for a lump-sum settlement. To try to meaningfully restrict the lump-sum settlement is a practical matter almost impossible to do and it is not appropriate.

Senator Fuller offered amendments to Senate Bill 281. (Exhibit No. 1)

Joe Bottomly, an attorney whose practice is mostly in workers' compensation, offered two amendments. The first would exclude permanent partial. Second, if there is going to be a discount it should be tied to a straight figure and that figure should reflect that there are no cost of living increases.

Senator Towe offered additional amendments to Senate Bill 281. (Exhibit No. 2)

Bob Gabriel, an attorney from Great Falls, said he has practiced workers' compensation law since 1957. He said Montana has one of the better workers' compensation laws in the United States. He said Senator Towe's amendment restricts the discretionary powers of the people who review the cases.

Terry Trieweiler, an attorney from Whitefish, said Senator Towe's amendment is an improvement over the original bill. The 6% rate of reduction is better than tying it to the cost of an annuity.

George Wood, Executive Secretary of Montanas Self-Insurer's Association, agreed with Senator Towe and the intent of the bill to curtail lump-sum. However, he did not feel the amendment would be more successful than was the conference committee on which he served. If lump-sums are to be curtailed, it will have to be by statute with a definite amount placed in the law. The annuity price is the amount we will have to pay today to provide the employee with the full benefits of the Workers' Compensation Act for his lifetime. In most cases an annuity settlement provides benefits beyond the Workers' Compensation Act since they usually have a guaranteed period of time. Mr. Wood said this organization would support the amendment from Senator Fuller.

Keith Olson, representing Montana Logging Association, said his group supported Senator Fuller's amendments. Mr. Olson suggested giving this bill to a governor's study commission to look at and review whether lump-sums are good or bad or whether or not we need the cost of living increases.

Gary Blewett submitted a list from the Workers' Compensation Division detailing the impact of stepped discount rates. (Exhibit No. 3) Mr. Blewett said the list will give some idea about the impact on state compensation insurance fund rates. The zero (0) % at the bottom of the discount rate column represents the law as it stands right now with the Willis decision; there is no discount rate while lump-sum is generated. Senate Bill 218, as the division has proposed it, has built in an assumption of a discount rate of 11%. The division has between 1 and 10, then discount rates could be applied. For example, in Senator Towe's amendment, a 6% discount rate would still yield under the existing lump-sum criteria.

Gene Peacott spoke about whether or not an injured worker should receive a lump-sum now or partial lump-sum now and periodic payments later on or just periodic payments over a long period of time. He said he could not conceive what was being talked about, what would be an extraordinary circumstance.

Senator Fuller closed on Senate Bill 281 by stating that this bill is an extremely complex issue. He urged allowing the interim committee to take a look at it. Senator Fuller added that Senator Towe's amendment is unworkable. The more you can leave this bill alone, the better its chance of getting something through. The hearing was closed on Senate Bill 281.

Exhibit No.1
2/9/85

PROPOSED AMENDMENT TO SENATE BILL NO. 281

INTRODUCED COPY

1. Title, line 10.

Following: "MCA;"

Insert: "PROVIDING FOR RETROACTIVE APPLICABILITY AND EFFECT;"

2. Page 3, line 4.

Following: line 3.

Insert: "NEW SECTION. Section 3. Applicability - Retroactive effect. This act applies retroactively within the meaning of 1-2-109 to injuries incurred and lump sums awarded or paid prior to the effective date of this act if a lump sum is awarded or paid for the injury , or the award or settlement is reopened and redetermined, after the effective date of this act."

Renumber: subsequent sections.

For Sen. Tow Exhibit No. 2
2/9/85

Proposed amendments to SB 281, introduced copy.

1. Title, lines 7 through 10.
Following: "PAYMENT" on line 7
Strike: "TO" through "PERIOD" on line 10
Insert: "BY DISCOUNTING THE LUMP-SUM BY 6 PERCENT; PROVIDING A METHOD FOR DETERMINING WHETHER A LUMP-SUM WILL BE GRANTED

2. Page 1, line 13.
Following: line 12
Insert: "WHEREAS, the Montana Supreme Court has interpreted the law to disallow any discounting of a lump-sum workers' compensation payment; and

WHEREAS, this would greatly increase insurance rates; and

WHEREAS, the Department of Labor and Insustry desires to amend the law to provide a lump-sum payment not exceeding the purchase price of an annuity that would yield income equal to the total biweekly benefits payable; and

WHEREAS, annuity rates fluctuate widely and are at a currently high rate of 10 or 11 percent; and

WHEREAS, the inflation rate also fluctuates widely, is currently at approximately 3 percent, and affects the worker's purchasing power; and

WHEREAS, the Legislature desires to reach a compromise between the interests of workers and the interests of employers.

THEREFORE, the Legislature finds it appropriate to amend section 39-71-741, MCA, in the manner provided by this act."

3. Page 1, line18 through page 2,line 4.
Following: "payment." on page 1, line 18
Strike: remainder of subsection (1)

4. Page 2, line 9.
Following: "as to"
Strike: "what"

5. Page 2, lines 9 and 10.
Following: "what the" on line 9
Strike: "purchase" through ", the" on line 10

6. Page 2, line 11.
Following: "conversion."
Insert: "The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion will be awarded:

(a) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The award of a lump-sum must be the exception, not the rule, and may be made only in extraordinary circumstances. The worker or his beneficiary has the burden of proving that extraordinary circumstances exist, that there is a genuine and substantial need, and that it is highly probable that the use to which the lump-sum will be put will successfully address the extraordinary circumstances that gave rise to the award.

(b) A lump-sum may not be awarded solely because it would put the worker or his beneficiary in a better financial position than he was in prior to the injury; and the fact that biweekly payments will not put him in the same financial position he was in prior to the injury is not alone grounds for awarding a lump-sum.

(3) A lump-sum award must equal the total of the biweekly payments that would otherwise be due under this chapter, minus a discount equal to 6 percent per annum without compounding."

Renumber: subsequent subsections

Exhibit No. 3
2/9/85

WORKERS' COMPENSATION DIVISION

IMPACT OF STEPPED DISCOUNT RATES

Discount Rate	% Increase in Rates	Biennium Dollar Impact
11%	0%	$ -0-
10	02	1,963,000
9	04	4,176,000
8	06	6,639,000
7	08	9,388,000
6	11	12,529,000
5	14	16,062,000
4	18	20,096,000
3	21	24,700,000
2	27	29,948,000
1	32	36,016,000
0	38	42,976,000

Exhibit No. 4
2/9/85

LUMP SUM

IN THE EXISTING STATUTES, WORKERS' COMPENSATION BENEFITS ARE PAID ON A WEEKLY BASIS. THE PROPOSED BILL WOULD ALLOW THE BENEFICIARY TO RECEIVE THE FULL AMOUNT OF COMPENSATION IN ONE LUMP SUM. THE DIVISION OF WORKERS' COMPENSATION AND THE INSURANCE COMPANIES OPPOSE THIS BILL BECAUSE THEY WILL NOT BE ABLE TO COLLECT INTEREST ON THIS MONEY IF IT IS GIVEN OUT IN A LUMP SUM. THESE COMPANIES SHOULD NOT BE RECEIVING THIS INTEREST IN THE FIRST PLACE SINCE ONCE THE COMPENSATION IS AWARDED, THAT MONEY SHOULD GO DIRECTLY TO THE RECIPIENT AND SO SHOULD ALL INTEREST STEMMING FROM IT. THE REASON THESE INSURANCE COMPANIES WANT THIS INTEREST IS BECAUSE OVER A PERIOD OF 10 YEARS THE INTEREST WILL NEARLY REPLACE THE INITIAL AMOUNT OF BENEFITS PAID OUT.

THIS IS UNREASONABLE BECAUSE THE DIVISION AND INSURANCE COMPANIES ARE MAKING MONEY OFF OF THE INJURED PERSON WHILE THEY ARE LOSING MONEY THAT SHOULD RIGHTFULLY BE THEIRS. THESE PEOPLE ARE FULLY CAPABLE OF HANDLING THEIR OWN FINANCES AND WOULD BE MUCH LESS DISADVANTAGED IF THEY RECEIVED THEIR BENEFITS IN A LUMP SUM SO THEY COULD SAVE OR INVEST IT.

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 14, 1985

The twelfth meeting of the Labor and Employment Committee was called to order by Chairman J. D. Lynch in Room 413/415, Capitol, at 12:40 p.m. on February 14, 1985.

ROLL CALL: All the members were present.

FURTHER CONSIDERATION OF SB 281: Senator Lynch said that Senator Fuller would not be supportive of any means of putting a cost of living adjustment in SB 281. However, he felt that was a committee decision, but Senator Lynch felt that there was room for some amendments to SB 281, and the foremost that I would consider feasible is a percentage of a discount on the lump sums that are granted. After visiting with 20 or 30 or 40 people, the 6% or 5% range that has been mentioned, I think that's possible, and I think that might be a basis where we might start on SB 281. Senator Towe has introduced a set of amendments. Mr. Bottomly from Great Falls, asked us to consider some amendments, and Senator Fuller has an amendment as I recall. With that brief introduction, I would open the meeting for discussion on SB 281. Whose amendments are these? It was determined that they belonged to the Division of Workers Comp.

Senator Towe asked if there was any interest in pursuing some of the things that he suggested the other day. Senator Towe told the committee that they are faced with doing something one way or the other. They have to act on the bill. Senator Towe asked if there was any interest in putting a loan program in to take care of the needs and the lump sum, and in exchanje in eliminating lump sums altogether. With the substitute of a loan program, we would then be able to put the money saved into a cost-of-living increase, which in my opinion is far more important and better for the worker. I asked John to work on this--where are you on this, John?

Mr. MacMaster, Legislative Council, replied that he had given Senator Towe copies of five questions that he asked of the Division and that they gave him the answers that the committee has copies of. (Mr.) MacMaster said that he understood that the cost savings of eliminating lump sum payments would be minimal. In other words, if you just said no more lump sums, the administrative costs saved to the divisions would be minimal, and the cost to the employers would be minimal also. Senator Blaylock asked that, before the Willis agreement they had lump sums, right? Were they discounted? Mr. MacMaster replied that yes they had them, and as he understands it they were discounted along the lines of what 281 does. Mr. MacMaster said that what 281 does is to codify what the Division was doing prior to Willis.

Senator Towe explained that he handles some workers' comp cases in his practice, and that in one of them the fellow wanted a lump sum settlement, and he ran the payments out and it came to $170,000. Senator Lynch asked if that was a lump sum of $170,000 at 38½ years expected lifetime? Senator Towe said whatever the life expectancy of his client was times the monthly payment..biweekly payments, and it came to over $160,000, so we asked what they would give us as a lump sum, and I think the figure was $55,000. I asked them how they got that, and they replied that they knew a good annuity in Denver where they could buy an annuity for $55,000 and it would pay him the same monthly rates to which he is entitled for the rest of his life, at the exact same figure that the workers' comp would pay. I think in that case, I was able to talk them out of another $10,000 and that was it. That's the problem and that makes it bad for the worker who really does need some money up-front. He said that insurance company is discounting that at 13% and that's a really high figure. There was some discussion regarding giving the client the money and letting him buy the annuity. Senator Towe then suggested that they loan the person the money that he needs to take care of his immediate problems, which may be say, $40,000, at an interest rate and then he continues to receive the payments. However, the payments go to pay off his loan, but he hasn't given up the total benefits, when the loan is paid off, he still has something left. But the attorneys won't get anything out of it in that situation. Senator Towe feels the loan program is very attractive.

Senator Blaylock said that in talking with many people, they believe that the workers' compensation program is working well. It is sound, it is generous and it works good. It seems to me that as our first duty we should maintain the soundness of the system, because it is good for our workers and it is good for our employers. Senator Blaylock said that he didn't feel that they could lay on the employers an increase such as 38%, or even 11%. Senator Blaylock would like to retain the lump sum payments if they could in some way. Senator Lynch asked if he was suggesting like Senator Towe's amendments of restricting the lump sum. Senator Blaylock said he was torn. He would hate to tell them that they can't have a lump sum, but he is also sure that they cannot do like post-Willis. They can't add 38%.

Senator Towe explained to Senator Lynch that if you didn't have to pay the $170,000 off for 20 years, you can take a lesser amount and invest it, and by 20 years let it build up. The question is how much do you have to invest? If you were to pay out $170,000 with a 13% discount in 20 years, the figure would probably be somewhere around $15,000. If that insurance company can go out

and invest that money at 13%, or it may be higher, they won't tell me the investment rate is, but if in fact, it was 6%, my guess is that you would have to put in something on the order of $75-$80,000, and that's what the difference in discount means, and that's what's hurting. This is why I object to the bill. You should not be able to take that very high interest rate and thrust it onto the backs of the workers. That's not fair.

Senator Aklestad said that he did not feel that SB281 was the full answer for the long-term. The Committee agreed. Senator Aklestad said that he thought he would be in favor of putting SB281 through in the manner in which Senator Fuller has adopted it, even though he doesn't feel it has all the answers he would like to come up with, and then have those answers answered with a study committee and then maybe they could come up with something for the next session that would cover the inflation, the lump sum, and these problems. He believes that time is too short to really work on it and do it justice.

Senator Lynch told Mr. Blewett that he had had a call from a claimant in his district saying that a friend had told him to wait to settle until after the legislature is through meeting in April. Senator Lynch felt that the man would be better off to settle now during post-Willis than to wait until later. Mr. Blewett agreed. Senator Aklestad agreed and listed facts and figures over the last three years showing how much of an increase there has been in workers' comp payouts, as well as the money paid in. He feels that adding on to the employers' payments is just another burden that they should not have to pay in order to keep them in business in the state.

Senator Keating said he was going to follow-up on what Senator Blaylock had to say. Senator Blaylock said that pre-Willis we had a good workers' comp. It seemed fair and equitable for everybody, and John said there was minimal impact from lump sums pre-Willis as well. As 281 is presented except for the retroactive applicability amendment, it would place us about at that pre-Willis status that would not deny lump sum requests although it might dissuade them somewhat because of these situations, and then the rest of them could go into that advisory council in the interim so that the cost-of-living could be considered. We could maybe come to a better discount situation. Senator Keating agrees with Senator Blaylock.

Senator Haffey asked Mr. Blewett if Justice Shea had said that if the Workmen's Compensation Division had been doing what the legislature had told them to, it would have been making lump sum payments in accordance with what the Supreme Court decided? Am I correct? Mr. Blewett replied that that's what he heard Justice Shea say in the hearing. Would the employer's contribution be reduced if we did all this as set forth and specified when lump sum payments could be made, would the costs to the division and employers be lower? Mr. Blewett replied that it would.

Senator Haffey asked if they could draft specific language would that address the prohibative cost to the division and to the employer. Mr. Blewett replied that if they could draft language that gave real criteria to the decision-makers, the court, or whoever, indeed that would narrow it down, but it depends on how many of those you create. Senator Haffey feels that if the committee doesn't do something, there will be hundreds of requests for lump sum payments over the next two years. He feels that they have to get specific.

Senator Thayer said that if they didn't add the discount, people would be foolish not to ask for a lump sum settlement. Senator Thayer felt that they didn't have any problems until the Willis case from as far back as the '70's.

Senator Lynch asked Patrick McKittrick, Great Falls Attorney, to answer Senator Thayer's question since he would be familiar with things further back. Mr. McKittrick gave the background on the act as it currently reads. He told them about the discount, and how he didn't know exactly how much the insurers discounted under plan #1 and plan #2. He believes they should put it at 6%, study it for two years and let it go in the interim. Senator Lynch said 6% was a figure that was mentioned to him that would make no-one happy. The insurers would not be pleased, the claimants would not be pleased, and no-one else would be pleased.

Senator Lynch asked the insurers other than the division's to answer Senator Thayer's question about how they discounted prior to the Willis decision. Jim Davis with the Orion group said that he had only been here since 1983, but that they had an underwriter who was very familiar with this and he introduced Dan Glenny. Mr. Glenny said that he couldn't answer prior to the Willis case, but at the present time when the court allows a settlement, they do take into account the present cost of an annuity that could be used to settle the case, so the answer would be yes. We do use an annuity. He said they would eventually compromise with the attorney because they can buy one from USF&G or from themselves for 9% or 11%. Senator Towe said that he could tell them a little bit about how this worked before the Willis decision and how that impacts here. Generally when the attorneys and the insurers start to discuss settlement, they talk discount. I think I settled some for 8% and some for 9%, and maybe even higher than that. The higher it is, of course, the worse it is for the claimant. That of course, was not done with the Willis decision. With this bill, there is complete annuity discount, and I submit that neither are fair to the working man. Under the present law, I really think that's unfair the other way. In other words, I think that is too much, because with that case I had of the $170,000, that man could take his $170,000 and invest it and he would have probably two or three

times that much for the rest of his life, just by investing that amount of money. And it wasn't intended, I don't think that they should get the windfall, so I don't think that's fair. On the other hand, it isn't fair the other way because I know what will happen if you pass this law. Unfortunately, there are too many workers who want that lump sum payment, and they will take too much less to get it. Senator Towe said he was not fond of lump sums because a lot of people who go to see him have already been through a lump sum. They have gotten a lump sum settlement and it is gone. Senator Towe really believes that the best solution to the problem is to really tighten the lump sums. Senator Towe suggests that they improve the language with the language he suggested the other day where you tighten down the lump sums, and you put a 6% discount on those that you do allow. You can't cut them off altogether because there are some really serious needs that have to be dealt with.

Senator Haffey asked Senator Towe to quickly explain the mathematics to him. He asked if you just take the biweekly payments and figure them out according to life expectancy. Senator Haffey asked him to tell him how the 6% would be applied to it. Senator Towe said that they will take the same $170,000, which is the biweekly payments multiplied by the rest of his life, or as according to the last legislative session until social security kicks in. It is how much you would have to pay out now if you had the money invested at 6% in order to equal those monthly payments. I got it out of a big book. The 6% number will put it somewhere between $170,000 and $55,000. Mr. Blewett said that he had given them a handout last time that would show them the range between zero and 11%. Mr. Blewett said that Senator Towe indicates annuities are a lot higher than that, and they might well be. The reason we chose that is because it was pretty close to the rate of return that we have been getting. The way things are right now, that would generate an 11% increase in premium, and that is because of the differential between the rate of return that we have now and the rate by which we would settle. Senator Haffey said but a tightening up now on the language when lump sums are appropriate, would further reduce the cost? Mr. Blewett replied, exactly.

Senator Manning still feels that the workers' compensation act was put in place to protect the employer and not the employee so much, and I do think that we can't forget the employer. I was wondering if there was any feasibility of putting together a committee bill with the ideas that we have heard here along with maybe an interjection similar to what SB219 has got for cost-of-living.

Senator Keating asked Mr. Glenny if they were using the 11% figure for discounting at the present time. Mr. Glenny replied that you negotiate. It is not just 11%. You just negotiate the figure.

Senator Keating wanted to know how the insurer felt about SB281. Mr. Glenny told him that it basically put the employer in a good position because it virtually eliminated lump sums with the discounts listed. This puts the employer in an excellent position if 281 is in force so they have these discounts. Senator Keating asked Mr. Glenny what he would consider a discount rate that would be a balancing figure at this time. Mr. Glenny felt that they had to take more than just this bill into account. He said if they were going to put a COLA in SB219, whatever that amounts to, they were talking about 6% and then put a 6% discount in here, you balanced yourself out--you still have Willis at $332,000 in a compromise. You have ended up no place at all. Senator Lynch asked Mr. Glenny if, assuming that this were the only bill and the rest get tossed to a study committee, what percent would you think..is 6% a reasonable one? Mr. Glenny responded that it was fair. Now, this is assuming it is the only bill, the COLA is going to get studied, and we are not trying to balance.. a bill of this magnitude is going to get through this session. Our actuary in Connecticut feels that 6% is too low, Mr. Glenny replied. He wants it at 11 or 10 3/4ths. Senator Towe asked Mr. Glenny to forget about his company, what did he think? Mr. Glenny replied that rates are going to go up, and you will see things rise because it has to be cost effective when you offer benefits versus the premiums that you collect. I don't really have a percentage figure. If the division is using 11%, I would have to agree to 11%. That's the way we have been doing it, you know, for years and years, Mr. Glenny replied.

Senator Towe asked Mr. McKittrick what he thought the percentage should be. Mr. McKittrick said that that is what he suggested, but as he understands it, the division has already based on the Willis decision raised the premium 15%, or anticipating raising the premiums 15%, so we are looking basically at a 5 or 6% discount in relationship to the fact that the premium has already been raised 15% because of the Willis decision.

Senator Blaylock asked Mr. Blewett if the cases pre-Willis were discounted between 7 and 8%? Is that where most of them fell? Mr. Blewett said he did not believe so. Senator Blaylock asked what they were discounted. Mr. Blewett said he believed they were discounted at or near an annuity rate, which he believed was in the realm of 10 or 11%. Mr. Blewett went on to tell the committee that there are many elements involved in a compromise and that the discount rate is only one of them. And if you change this one element, this base, so you can no longer consider a present value consideration, then you are going to have these kinds of rate increases. Mr. Blewett said that they used in their fiscal note, the assumption of an 11% rate of return as the thing that would be lost under this system, so a representation from a 0 to 11 is taking just that one factor into consideration assuming all the other compromise elements that one can

entertain held constant in the past. I would guess that the 6% discount would generate an 11% increase if all other factors are the same. However, that is based on where we were last year. We have made a 15% rate increase, so this would be different. Do you feel, Senator Blaylock asked, in order to cut down on the number of lump sum settlements that Senator Towe's language..have you seen that? Mr. Blewett replied that he had seen the suggested language. Senator Blaylock asked if that would really tighten down as far as he was concerned because the bill, as Senator Blaylock reads it, gives the division carte blanche on whether they approve a lump sum or not. Mr. Blewett replied that it only gives the division control if the insurer and the claimant agree. Then the division reviews that to make sure that it fits within these parameters, and that we would deny a lump sum that didn't have all of these criteria. Mr. Blewett offered to work out the language with Senator Towe that would fit and be fair to everyone.

Senator Haffey asked Mr. Blewett if what he is talking about is language based on the experience of the last couple of years, under which lump sum payments are called for, and that specific language with the 6% discount would be a step in the direction of addressing the place where both lump sums are appropriate and mitigating the increased costs, other than that annual cost that you have to make for your premiums anyway. Correct? Mr. Blewett replied yes.

Mr. MacMaster told the committee that they already had that kind of language. That it had already been worked out between himself, Mr. Blewett and Jan Vanriper, and he had copies of it. Mr. Blewett affirmed that they had drafted some language that they felt more comfortable with than the language it was in right now.

Senator Haffey asked Mr. Blewett if the 15% increase on top of the annual fluctuations had been imposed. Mr. Blewett said that they had assessed 15% effective January 1st. Senator Haffey said but lifting that off for a minute and say we are readdressing the situation, if language was put in place similar to what you are going to work out, are you also saying that if that language were in place in the law, then you would be able to conclude and you would not know until experience demonstrated otherwise that there was no reason for an increase in premiums? Mr. Blewett replied yes.

Senator Lynch asked if this 15% increase would stay in effect if they put in new language. Mr. Blewett said it would not stay in effect with the new language in the law. Senator Lynch said it would negate the rates on July 1st. Mr. Blewett said that they would collect the rates as is on July 1st, but they would not let the 15% continue. Senator Lynch asked the committee if they thought they should be promoting annuities. He said if he were an annuity salesman, he would be writing in here saying how much he liked this bill, because you are going to tell people if they

want lump sums, you are going to buy annuities. Senator Towe explained that it did not work that way. First, you find someone who wants to sell an annuity, and then you go back and you say, I can buy an annuity for x number of dollars, and I will settle the case with you for say $50,000. Senator Towe said you never buy the annuity--you get this because of the price of the annuity.

Senator Keating said that if they raised the discount rate to 9%, according to Mr. Blewett's chart, they could increase the premium rate to the employer by 4%, does this mean that you could reduce the 15% increase that you gave them by 11%? Mr. Blewett replied that it should be even more, because this 4% increase assumes that there is no change in the way that we controlled lump sums. We are talking about controlling the volume of lump sums, which should severely reduce the numbers. This bill would not create an increase because we had done a good enough job in controlling the volume of lump sums and still done a good enough job to have a high enough discount on the balance that there wouldn't be an impact. Senator Keating said there wouldn't be an increase, would there be a decrease? Mr. Blewett said considering all the factors there should be a decrease in the 15%.

Senator Lynch said that he got the feeling they were headed toward a compromise, so he asked Mr. Olson, in all fairness, if he could see where they were heading and did he think this is going to be a fair compromise? Mr. Olson said that if he is hearing everything right, he is pleased with what he is hearing. He said he is a little worried about whether or not it will work. He said that he is interested in rate stability, and if 281 is going to be the catalyst for that, and then we are going to throw a lot of other legislation to a committee, and not undo what we do here, I'm pleased.

Senator Aklestad said that he gave them the figures before and that they had a $5 million dollar increase going into this, and that they are not just compromising the big employers, they are compromising everyone. Senator Aklestad feels that they are compromising the employer and that this committee should make darn sure when they reach these compromises that the employers get a decrease in premiums, especially in light of the drastic raises they have had over the last four or five years.

Senator Blaylock said that as far as 281, they did not need a study committee. Secondly, he would like to see Mr. Blewett, Senator Towe and whoever else wants to get involved in this, draw up that language, and then he thinks the aim should be that they reduce that 15% increase. That's absolutely essential.

Senator Manning agreed with Senator Blaylock, but he would like to have a copy of that information and somebody explain it fully. He would like to have both sides involved.

Senator Lynch said that he felt that both sides are well aware and they will be here.

Senator Thayer said that he felt that they had to deal with the other legislation also, because he felt it would be too bad to do all this work on 281 and then have one of the others crashed through and negate all that they have done.

Senator Lynch said that he would be willing to vote for a table, and to put those other bills right into that council, because he doesn't think they can address all those issues this session. He would love to see a COLA, but he doesn't think they are prepared to address that issue this session.

Senator Towe agreed, but he wants to talk on 220 separately. He feels that 220 is a separate issue. Senator Lynch said they could look at 220, but he is of the opinion that if they can get 281 out, upsetting both sides equally, then he thinks they have accomplished a great deal for both sessions. He feels it is necessary to get 281 out in some fashion.

Senator Keating said he agreed with Senator Blaylock as to the language, but it is his understanding after listening to the testimony here, that it is possible for that language to affect legislatively through 281, a situation whereby the rates paid by the employer can be rolled back to January 1, 1985..pre-January 1, '85 and still arrive at some little bit better discount rate than the 11%.

Senator Lynch asked Mr. Blewett for the time-frame in which they might have something concrete to look at. How about a Saturday meeting? Mr. Blewett said he would like to have a proposal for him by Saturday since they are coming up on transmittal. Senator Lynch gave Mr. Blewett until Monday and then said he would set another date for a meeting.

The meeting was adjourned at 2:20 p.m.

J. D. Lynch

SENATOR J. D. LYNCH, CHAIRMAN

Exhibit 1
2-14-85
Labor & Employment Committee

Prepared 2/14/85

RE: SB281

RESPONSE TO QUESTIONS FROM SENATE COMMITTEE STAFF

1.) What are the cost savings of prohibiting lump sum payments?

Premium: This is equivalent to the impact of present value lump sums. Therefore, the premium rate increase due to the Willis "no discount" decision would be cancelled.

Administrative: Relatively little time was spent on the review of lump sums themselves (pre-Willis). The time consuming aspects are a, b, and c:

a.) Whether claim is permanent total or permanent partial.

b.) The amount of biweekly benefit.

c.) The duration of benefit.

Finally:

d.) Conversion of future benefits to a lump sum is considered.

2.) How big a cost of living increase would these savings fund?

- Depends on how the "no premium" increase is viewed. The passage of SB281 or a "no lump-sum" law would avoid a 38% rate increase in July.

3.) Assume a worker gets a loan on the private market against the pledged future biweekly payments. What would be the size of the loan available compared to SB281 or, alternatively, compared to the Willis decision?

- The net to the claimant would approximate the amount available under SB281 rather than the Willis "no discount" amount. The exact net would depend on the interest charged by the bank. The SB281 fiscal note assumes an 11% rate of return. Bank interest rates are generally higher. Current "new car" loans are at 13 1/2% and commercial loans are at 15 1/2%.

4.) Could loans be made from the State Fund?

- Use of premium is limited by 39-71-2322 and 39-71-2324. All reserves must be turned over to the Board of Investments as "part of the long-term investment fund."

- If the law were changed, the Division would need staff to administer the loan plan.

- If loans did not yield the rate of return we now get, premium would have to increase to make up the difference. (Premium is always adjusted according to the estimated rate of return on investments.)

5.) Could the State Fund make loans to claimants under Plan No. 1 or 2?

- Not without a change in law as indicated in number 4.

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 20, 1985

The meeting of the Labor and Employment Relations Committee was called to order on February 20, 1985 at 5:40 p.m. by Chairman J. D. Lynch, in Room 413/415 of the Capitol.

ROLL CALL: All members were present.

DISPOSITION OF SENATE BILL 281:

Discussion of Senate Bill 281 commenced. Senator Lynch noted that the members read an attempt to compromise on Senate Bill 281. He stated there would no longer be any testimony to this bill unless a specific question was directed to any witness.

Senator Aklestad asked if the committee would need Senator Fuller's amendments to comply with the state on this bill. John MacMaster replied that he believed they were needed, and he suggested to the division that they be put in.

Senator Keating asked John MacMaster why he felt they (the amendments) were necessary. John MacMaster replied because he thought there was a question as to whether or not you could make the new law, that is the discount rule, apply to injuries and lump sums that were awarded prior to the effective date of the new law. Senator Towe asked if the committee was discussing the proposed retroactive amendment. Senator Lynch replied that was correct.

Senator Towe asked John MacMaster what the amendment meant. John MacMaster replied that it meant basically two things, one was that if the injury was prior to the act's effective date and the award was after the effective date, then the act would apply; if the injury and an award occur prior to the effective date and the award was reopened and redetermined, then this act would also apply. Senator Towe asked if that was permission to reopen it. John MacMaster replied that it was not, in his opinion. Senator Towe asked what the basis was for reopening. John MacMaster replied that to him the basis would be whatever it was currently under the Workers' Compensation Act. If they could reopen now they would be able to reopen under the same principles and rules for reopening after this act's effective date, but if they do reopen then this act would apply.

Mr. Blewett commented by stating that if this act passed it would be a disincentive to lump sum payments. Senator Lynch

asked Mr. Blewett what the criteria was currently for reopening a case. He replied that the Supreme Court decision in the case of Keenas allowed for the reopening of a case for a neutral effect, meaning both sides had understood the facts at the time, and that was the only basis he knew of.

Senator Thayer asked if the language that Senator Towe suggested would hurt anything in the bill. Senator Lynch replied that he did not think so. Senator Towe's suggestion was that the passage of this act would not be grounds to reopen a case.

Senator Aklestad stated that to his understanding you could not reopen a case unless you qualify under the criteria of the existing law. John MacMaster replied that was correct. Senator Keating moved Senator Fuller's amendments to Senate Bill 281 BE ADOPTED. (Exhibit No. 1)

Senator Towe made adjustments to Senator Fuller's amendments by adding this language: "The mere passage of this act will not be grounds for the reopening of any case."

Senator Keating's motion would not include this language put in by Senator Towe. The motion carried and passed unanimously by a voice vote. The amendments were ADOPTED.

Senator Aklestad had a concern as to whether they qualify in the correct manner, and with that in mind, he moved Senate Bill 281 DO PASS AS AMENDED.

Senator Aklestad stated that he made that motion because there was no indication by the department, due to the handout that the committee received, with the amendment at the 6%, that there was guarantee of a figure by the department. He felt that Senate Bill 281 as amended would put Montana back to where it should be, so there won't be an additional 15% increase. He also mentioned that the department mentioned an 11% increase as years go on because of inflation.

Senator Lynch stated he opposed the motion to adopt the amendments. He said he had been trying to come up with a compromise in an attempt to be fair with both sides, to try to get the 15% down to 2 or 3 percent. He also stated he was not satisfied from the workers point of view to completely eliminate the possibility of necessary lump sums. He felt there were instances where people will be better served with the lump sum and he thought the 6% discount would be a logical place to look, and with this language it would discourage lump sums and reduce the 15% to 2 or 3%, and that would be the only way he would support the bill.

Senator Keating stated the 6% discount rate that would be put into the bill is an 11% increase in the rates. Senator Haffey asked Gary Blewett if the bill could be amended further to include language that would reach some kind of a compromise, would they be back at a place where they were prior to the Supreme Court action on Willis and prior to the workmen's compensation action on Willis that led to the Supreme Court. Would we be back in a place where discounts were used on a case by case basis. Would we be tighter than the way things were then. Mr. Blewett replied no to all of Senator Haffey's questions.

Mr. Blewett explained that the circumstances they had prior to the Willis decision was the discount rate or a lump sum settlement that he called money market neutral. Whether you paid them in a lump sum or over a period of time, it had the same cost to the insurer.

Senator Haffey asked how the language they had fit in with the circumstance prior to the Willis decision. Mr. Blewett replied it would put them at about a 2 or 3% per year higher cost to the employer.

Senator Towe asked Gary Blewett to explain 2-B in the proposed language they had been considering. Mr. Blewett replied that 2-B said that you could allow for a lump sum to be used to invest in a business or pay off debts, so they could approximate their income they had before the accident. You could even allow for some reasonable expected gross at the time they lost wage increases, etc. He also stated that to the extent of the intended use of the lump sum would generate income in excess of that, that would be putting yourself into a considerably better position because of the lump sum. He stated that this proposal said if they got into that position then they should simply get the money market value of the future benefits.

Senator Towe asked if that meant that if someone's benefits were $500 per month and he could buy an apartment house for $50,000 that would earn $450 per month income, that this would be permissible. But if he bought a different business for the same amount of money that would earn $650 per month, that would not be permissible. Mr. Blewett replied that could be the effect, however, he did not feel that would be the outcome of this bill.

Senator Haffey stated that the amendments to him did the following: paragraph 1 addresses the 6%, paragraph 2 explicitly tightens up, and paragraphs a, c, d and 3 all address that tightening up objective. Mr. Blewett replied he was correct. Senator Haffey stated that paragraph b did more than address the tightening up objective; to him it

precludes any possibility that a lump sum would be anything higher than the purchase price to an insurer of an annuity, even with the 6% discount language. Mr. Blewett replied he did not feel that was the case. He thought it simply made the statement about what is a legitimate use of a lump sum, and if it should be used for enhancing a claimant's income opportunity beyond what he might have expected had he not had the accident.

Senator Haffey then asked Gary Blewett if he was saying that a lump sum that was in excess of the purchase price of an annuity that might fall out of one or more cases in the next couple of years as a result of this language, as long as the lump sum does not run into the constraints set forth in paragraph "b". Gary Blewett replied he was saying that a lump sum was okay to increase a person's opportunity for additional income over what they might have experienced had they not had the accident, but it shouldn't cost the system any more than the annuity price.

Senator Towe spoke against the motion. He stated he could not support the bill unless something was done to help alleviate the problem.

Senator Keating stated that those who opposed Senate Bill 281, and testified against Senate Bill 281, were all attorneys except for two; the AFL-CIO and Judge Shea. He felt there should be something done about attorney fees. He also emphasized that if they were trying to help businesses in the state, but it was only the employed paying into the fund at the present time, and that person will be the only one absorbing this 12% increase or any other amendment.

Senator Lynch called for the vote. There was a roll call vote taken on Senator Aklestad's motion that Senate Bill 281 DO PASS AS AMENDED. (Exhibit 2) The motion failed.

Senator Towe asked Karl Englund if he had anything to do with the drafting of the amendments. He replied he was in substantial agreement in terms of a compromise with the language as it was set forth. He had a problem with "b" because he felt it would lead to illogical results.

Senator Towe moved the adoption of further amendments to Senate Bill 281. (Exhibit 3)

Senator Thayer stated he had problems with the state trying to make decisions about what a person is supposed to do with his lump sum settlement.

Senator Keating asked Mr. Blewett if the worker came up with too good of an idea, if he could not get the lump sum? Mr. Blewett replied that he could not get it with the 6%

discount.

Senator Haffey asked Gary Blewett if Senator Towe's proposed amendments were to be adopted, would there be fewer lump sum payments in the next few years, and would they all be much higher? He replied if you eliminated "b" it would create less lump sum payments being authorized, but more than what he anticipated in the bill.

Senator Aklestad stated that he felt this should be studied because of the complexity of the bill. Senator Lynch agreed. Senator Thayer stated he felt they were missing the point of the awarding of lump sums.

Senator Thayer stated that the lump sum should not be discounted, and the committee should look at an 8 or 9% figure. Senator Lynch stated that the reason he was trying to find a compromise was to get the 15% down to a reasonable increase and it is down to 2 or 3% now.

Senator Haffey asked Gary Blewett how much the cost to the division and the insurers of the bill with the amendment, including "2b" pre-Willis, and the cost that Senator Aklestad talked about would go up. Gary Blewett replied 2 or 3%. Senator Haffey asked how much it would go up without paragraph "2b" included. Gary Blewett replied somewhere between 3-11%. Senator Haffey then asked if paragraph "b" effected the amount of lump sums and the number of lump sums. Gary Blewett replied that was correct.

Senator Keating asked Mr. Blewett why he arrived at the 6% discount figure? Mr. Blewett replied that was what the committee presented to him as a condition. Senator Keating asked that given the 6% discount, could you devise a lump sum control mechanism to reduce the volume so as to mitigate as far as you could reasonably do it? Mr. Blewett replied that with the amendments the table was no longer effective. (Exhibit 4)

Senator Keating stated that what they were trying to do was to preserve the system at least for two years so that the study group could come up with something that would be fair for everybody. He felt they had to get as close to a zero increase in the employers premium in order to protect the whole system; the worker, the employer, and the lump sum payment. He suggested to leave paragraph "b" in the amendments as a discouragement to lump sum payments and he wanted to amend it to an 8% discount.

Senator Towe withdrew the portion of his motion to take out "2b" and moved that it be re-inserted.

Senator Keating made a sub-motion to adopt Senator Towe's amendments to change the word "weekly" to "annually" in the first paragraph, and to change 6% to an 8% discount.

Senator Haffey made a substitute motion for all motions pending that pages 1-4, with "annually" still included and with 7% rather than 6% and including "2b", that the amendment be adopted for Senate Bill 281 as already amended. A roll call vote was taken on Senator Haffey's motion. (Exhibit 5)

The motion carried and passed with the vote being 5-3. The amendments were ADOPTED.

Senator Towe moved that Senate Bill 281 DO PASS AS AMENDED. The motion carried and passed with Senator Aklestad voting NO.

ADJOURNMENT: The meeting was adjourned at 7:10 p.m.

J. D. Lynch, Chairman

bd

EXHIBIT 1

LABOR AND EMPLOYMENT

PROPOSED AMENDMENT TO SENATE BILL NO. 281

INTRODUCED COPY

1. Title, line 10.

Following: "MCA;"

Insert: "PROVIDING FOR RETROACTIVE APPLICABILITY AND EFFECT;"

2. Page 3, line 4.

Following: line 3.

Insert: "NEW SECTION. Section 3. Applicability - Retroactive effect. This act applies retroactively within the meaning of 1-2-109 to injuries incurred and lump sums awarded or paid prior to the effective date of this act if a lump sum is awarded or paid for the injury , or the award or settlement is reopened and redetermined, after the effective date of this act."

Renumber: subsequent sections.

EXHIBIT 2

LABOR AND EMPLOYMENT

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE 2-20-85 SENATE BILL NO. 281 TIME 5:40 p.m.

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK	X	
SENATOR HAFFEY		X
SENATOR KEATING	X	
SENATOR MANNING		X
SENATOR THAYER	X	
SENATOR TOWE		X
CHAIRMAN LYNCH		X

Beth Daily
SECRETARY

Chairman
J.D. LYNCH

Motion: SB 281 DO PASS AS AMENDED(with Senator Fuller's amendments)

THE MOTION FAILED

1985

EXHIBIT 3

For Sen. Towe

Proposed amendments to SB 281, introduced copy.

LABOR & EMPLOYMENT

1. Title, lines 7 through 10.
Following: "PAYMENT" on line 7
Strike: "TO" through "PERIOD" on line 10
Insert: "BY DISCOUNTING THE LUMP-SUM BY 6 PERCENT; PROVIDING A METHOD FOR DETERMINING WHETHER A LUMP-SUM WILL BE GRANTED

2. Page 1, line 13.
Following: line 12
Insert: "WHEREAS, the Montana Supreme Court has interpreted the law to disallow any discounting of a lump-sum workers' compensation payment; and

WHEREAS, this would greatly increase insurance rates; and

WHEREAS, the Department of Labor and Insustry desires to amend the law to provide a lump-sum payment not exceeding the purchase price of an annuity that would yield income equal to the total biweekly benefits payable; and

WHEREAS, annuity rates fluctuate widely and are at a currently high rate of 10 or 11 percent; and

WHEREAS, the inflation rate also fluctuates widely, is currently at approximately 3 percent, and affects the worker's purchasing power; and

WHEREAS, the Legislature desires to reach a compromise between the interests of workers and the interests of employers.

THEREFORE, the Legislature finds it appropriate to amend section 39-71-741, MCA, in the manner provided by this act."

3. Page 1, line18 through page 2,line 4.
Following: "payment." on page 1, line 18
Strike: remainder of subsection (1)

4. Page 2, line 9.
Following: "as to"
Strike: "what"

5. Page 2, lines 9 and 10.
Following: "what the" on line 9
Strike: "purchase" through ", the" on line 10

6. Page 2, line 11.
Following: "conversion."
Insert: "The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion will be awarded:

(a) It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The award of a lump-sum must be the exception, not the rule, and may be made only in extraordinary circumstances. The worker or his beneficiary has the burden of proving that extraordinary circumstances exist, that there is a genuine and substantial need, and that it is highly probable that the use to which the lump-sum will be put will successfully address the extraordinary circumstances that gave rise to the award.

(b) A lump-sum may not be awarded solely because it would put the worker or his beneficiary in a better financial position than he was in prior to the injury; and the fact that biweekly payments will not put him in the same financial position he was in prior to the injury is not alone grounds for awarding a lump-sum.

(3) A lump-sum award must equal the total of the biweekly payments that would otherwise be due under this chapter, minus a discount equal to 6 percent per annum without compounding."

Renumber: subsequent subsections

EXHIBIT 4

WORKERS' COMPENSATION DIVISION

LABOR & EMP.

IMPACT OF STEPPED DISCOUNT RATES

Discount Rate	% Increase in Rates	Biennium Dollar Impact
→ 11%	0%	$ -0-
10	02	1,963,000
9	04	4,176,000
8	06	6,639,000
7	08	9,388,000
→ 6	11	12,529,000
5	14	16,062,000
4	18	20,096,000
3	21	24,700,000
2	27	29,948,000
1	32	36,016,000
0	38	42,976,000

EXHIBIT 5

LABOR AND EMPLOYMENT

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE 2-20-85 SENATE BILL NO. 281 TIME 5:40 p.m.

NAME	YES	NO
SENATOR AKLESTAD		X
SENATOR BLAYLOCK	X	
SENATOR HAFFEY	X	
SENATOR KEATING		X
SENATOR MANNING	X	
SENATOR THAYER		x
SENATOR TOWE	X	
CHAIRMAN LYNCH	X	

Beth Daily
SECRETARY

Chairman
J.D. LYNCH

Motion: FOR ALL MOTIONS PENDING THAT THE AMENDMENT BE ADOPTED FOR SB 281 AS ALREADY AMENDED.

THE MOTION PASSED.

1985

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 2/20/85

SENATE SEAT #

NAME	PRESENT	ABSENT	EXCUSED
Chairman Halligan	X		
V-chrm. Christiaens	X		
Senator Boylan	X		
Senator Fuller	X		
Senator Gage	X		
Senator Goodover	X		
Senator Kolstad	X		
Senator Neuman			X
Senator Thayer	X		
Senator Williams	X		
Senator Weeding	X		

Each day attach to minutes.

40TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND LABOR

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
214	2-27	3-15/3-18 3-20	3-20				3-20		
216	2-27	3-14	3-14				3-14		
221	2-27	3-15/3-18	3-18					3-18	
224	2-27	3-15/3-18	3-18				3-18		
233	2-27	3-20	3-20					3-20	
239	2-27	3-21	3-21				3-21		
250	2-27	3-21/3-28 3-29	3-29					3-29	
263	2-27	3-18	3-18					3-18	
274	2-27	3-18	3-18					3-18	
275	2-27	3-14		TABLED AS AMENDED					
281	3-7	3-22/3-26	3-26				3-26		
303	2-27	3-13	3-13				3-13		
323	2-27	3-21/3-29	3-29				3-29		
325	3-7	3-19/3-21	3-21					3-21	
333	2-27	3-20	3-20				3-20		
337	2-27	3-22	3-22				3-22		

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 22, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 22, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL 402: Hearing commenced on Senate Bill 402. Senator Dave Fuller, District #22, sponsor of the bill, explained this authorizes a lump-sum advance settlement in certain workers' compensation cases. This occurs when all parties agree payment is due and will allow a worker to get immediate payment which is deducted from the final settlement.

Proponent Jan VanRiper, Chief, State Insurance Fund Bureau, Department of Labor and Industry, distributed to committee members Exhibit 1 which is attached hereto. Ms. VanRiper explained that this amendment is necessary should House Bill 453 pass. She suggested the committee delay action on Senate Bill 402 until House Bill 453 has been approved.

Proponent Norm Grosfield, an attorney who practices in workers' compensation law, offered his support of the bill.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, stated the bill as written clarifies the issue. It allows benefits and will make what is currently happening legal.

There being no further discussion by proponents and no opponents present, all were excused by the chairman and the hearing on Senate Bill 402 was closed.

SENATE BILL 281: Hearing commenced on Senate Bill 281. Senator Dave Fuller, District #22, sponsor of the bill by request of the Department of Labor and Industry, explained that this revises the method of calculating the amount of a permanent total benefits lump-sum workers compensation payment by discounting it by 7%, compounded annually. The Willis supreme court decision changed the policy for granting lump sum payments. Previous policy sums were being discounted to present value and the supreme court said this can not be done, added Senator Fuller.

Proponent Gary Blewett, Administrator, Workers Compensation Division, Department of Labor and Industry, explained this legislation is necessary due to the Willis decision. This will decrease the expected volume of lump sum payments and provide a 7% discount. A claimant must show why they can not live on the bi-weekly payment. Confusion and inequities exist in present law.

Representative Clyde Smith, District #5, offered his support of the bill.

Proponent Keith Olson, Executive Director, Montana Logging Association, explained that House Bill 281 was amended in the senate. This bill can not be amended for fear of losing. Montana pays 25 cents per $100 worth of payroll and must compete with Idaho who pays 16 cents per $100 worth of payroll.

Proponent George Wood, Executive Secretary, Montana Self Insurers Association, explained this legislation is a compromise and if amended, will fail.

Proponent Don Allen, representing the Montana Wood Products Association, explained the timber industry is suffering from a bad recession and this represents a good compromise.

Proponent Forrest Boles, President, Montana Chamber of Commerce, stated the chamber is happy with the original bill and a compromise is needed.

Proponent Karl Englund, representing the Montana Trial Lawyers Association, stated they worked long and hard in the senate to reach this compromise. There use to be a 2% discount rate, but the legislature removed this and prior to the 2% it was 5%. Nobody wants to see the system go bankrupt or see injured workers go without benefits, added Mr. Englund.

Proponent Norm Grosfield, an attorney who practices in workers' compensation law, and representing the Independent Insurance Agents Association of Montana, offered his support of the bill.

Proponent Riley Johnson, representing the National Federation of Independent Business, Professional Insurance Agents and the Montana Homebuilders Association, offered his support of the bill.

Representative Norm Wallin, District #78, offered his

support of the bill.

Proponent Irv Dellinger, representing the Montana Building Material Dealers Association and the Montana Hardware and Implement Dealers Association, offered his support.

Proponents George Allen, representing the Montana Retail Association and Jim Murry, Executive Secretary, Montana State AFL-CIO, offered their support of the bill.

Representative Driscoll asked Gary Blewett if the last time the premium was raised was due to an increase in health care cost. Mr. Blewett stated there has been an increase each year, but last year was the largest increase since 1981.

Representative Driscoll asked Gary Blewett if on page 4, line 15, it is in the workers best interest to have a good attorney and accountant. Mr. Blewett explained an accountant is needed and that the insurer will invest with the claimant to get the best settlement.

Representative Thomas asked Gary Blewett what will happen to the rates. Mr. Blewett explained that if the Willis decision and the bill were not present, the rates would remain as is. Due to the Willis decision and Senate Bill 281 there is an increase of 15%. The rates stay the same plus or minus 2%.

Representative Driscoll asked Gary Blewett if a person is hurt and never gets a raise, is this in the best interest of the worker. Mr. Blewett explained that this is a standard statement of law.

Representative Driscoll then asked Mr. Blewett if it is presumed workers squander money and if they receive a lump sum just before being poverty stricken. Mr. Blewett stated that is a presumption and yes that is when they would receive their money.

There being no further discussion by proponents and no opponents, all were excused by the chairman and the hearing on Senate Bill 281 was closed.

SENATE BILL 356: Hearing commenced on Senate Bill 356. Senator Stan Stephens, District #8, sponsor of the bill, explained this exempts newspaper carriers and part-time newspaper correspondents from coverage under the Workers' Compensation Plan. The 1983 legislature passed a law

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 22, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormick	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. Senate Bill 281 DATE March 22, 1985

SPONSOR Senator Fuller

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
LYNN M. SEELYE	INTERGEM INC		✓
Jon Dalfonzo	MBMDA	✓	
Greg Neal	Mt Self Insurers	✓	
Riley Johnson	NFIB/MT. Home Builders	✓	
Clyde Smith	House District 5	✓	
HIRAM SHAW	Dept. Labor + Ind.		
J.H. Beck Bales	MT Chamber of Commerce	✓	
George Allen	MR Retail Assn	✓	
ROGER McGLENN	INDEPENDENT INSURANCE AGENT ASSOC. OF MT	✓	
[illegible]	[illegible]	✓	
Dan Cross	Billings Chamber of Commerce	✓	
Norm Crosfield	Self & Indep. Ins. Agents Assn. of Mont.	✓	
KEITH OLSON	MT. Logging Assn	✓	
Richard O. Pratt	MT Restaurant Assoc	✓	
Jim Murry	Mont. AFL-CIO	✓	
Jon Knight	Brotherhood Carp	✓	
John Allen	MT. Wood Products Assn	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOI

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 26, 1985

The meeting of the Business and Labor Committee was called to order by Chairman Bob Pavlovich on March 26, 1985, at 8:00 a.m. in Room 312-2 of the State Capital.

ROLL CALL: All members were present.

SENATE BILL 340: Hearing commenced on Senate Bill 340. Senator Bob Brown, District #2, sponsor of the bill, explained this authorizes deposit of public funds in credit unions and savings and loan association. Credit unions are better insured than banks and savings and loans, added Senator Brown.

Proponent Jeff Kirkland, Vice-President-Governmental Relations Montana Credit Unions League, supplied written testimony which is attached hereto as Exhibit 1.

Proponent Gene Rice, Chairman of Treasure State Corporate Central Credit Union and Treaurer Manager of State Capitol Employees Credit Union, supplied written testimony which is attached hereto as Exhibit 2.

Proponent Charles R. Abell, President, Whitefish Credit Union, explained credit unions can provide competitive rates for local funds deposits and the money will be kept locally.

Representative Thomas asked Senator Brown if public money must be deposited in an insured bank. Senator Brown explained that credit unions are insured as well or better than banks and savings and loans.

Representative Thomas asked Les Alke, Montana Bankers Association what the requirement is for inspection of loans. Mr. Alke stated they are examined by various examiners who charter each bank.

There being no further discussion by proponents and no opponents present, all were excused by the chairman and the hearing on Senate Bill 340 was closed.

HOUSE JOINT RESOLUTION 41: Hearing commenced on House Joint Resolution 41. Representative Norm Wallin, District #78,

interest and there was question as to whether the state can be billed for collecting for job service assessments. Representative Schultz asked Mr. Wanzenried if the money will end up in Washington D.C. He explained that it will when it is in the best interest. The department will hold the money for as long as they need to and it is to the advantage of both the state and employers not to transfer the money. Representative Brandewie asked Dave Wanzenried what the rate of interest is. Mr. Wanzenried called on Harold Kansier, who explained that it is in a money market investment and draws between 8 and 9 percent. Question being called, Senate Bill 95 will BE CONCURRED IN by unanimous vote.

ACTION ON SENATE BILL 281: Representative Kadas moved DO PASS on Senate Bill 281. Second was received, Senate Bill 281 will BE CONCURRED IN with all but Representatives Driscoll and Pavlovich voting yes.

ACTION ON SENATE BILL 402: Representative Kadas moved DO PASS on Senate Bill 402 and then withdrew his motion.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 10:00 a.m.

Rep. Bob Pavlovich,
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date March 26, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormick	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas	✓		
Norm Wallin	✓		

STANDING COMMITTEE REPORT

March 26 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration SENATE Bill No. 281

third reading copy (blue)
color

LIMIT LUMP-SUM WORKERS' COMPENSATION PAYMENT

Respectfully report as follows: That SENATE Bill No. 281

DO PASS
BE CONCURRED IN

Rep. Bob Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

SENATE BILL NO. 281

INTRODUCED BY FULLER, C. SMITH, J. BROWN, PETERSON, ELLISON, JONES, HAYNE, NELSON, HIRSCH, BLAYLOCK, THAYER, HAGER, B. BROWN, CHRISTIAENS, MAZUREK, HANSON, HARP, HIMSL, E. SMITH, HARPER, THOMAS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE AMOUNT OF A PERMANENT TOTAL BENEFITS LUMP-SUM WORKERS' COMPENSATION PAYMENT ~~TO THE PURCHASE PRICE OF AN ANNUITY THAT WOULD YIELD THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF THE COMPENSATION PERIOD;~~ BY DISCOUNTING IT BY 7 PERCENT, COMPOUNDED ANNUALLY; PROVIDING A METHOD FOR DETERMINING WHETHER A LUMP-SUM PAYMENT WILL BE GRANTED; AMENDING ~~SECTION~~ SECTIONS 39-71-741, 39-71-2109, AND 39-71-2207, MCA; AND PROVIDING AN APPLICABILITY DATE, RETROACTIVE EFFECT CLAUSE, AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-741, MCA, is amended to read:

"39-71-741. Compromise settlements and lump-sum payments -- division approval required. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Regardless of the date of the injury or of a prior lump-sum payment, a ~~lump sum~~ LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY PAYMENTS awarded or paid after [the effective date of this act] ~~may not exceed the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period;~~ MUST EQUAL THE ESTIMATED PRESENT VALUE OF THE TOTAL UNPAID PERMANENT TOTAL BIWEEKLY PAYMENTS, ASSUMING INTEREST AT 7% PER YEAR, COMPOUNDED ANNUALLY, UNLESS THE CONVERSION IMPROVES THE FINANCIAL CONDITION OF THE WORKER OR HIS BENEFICIARY, AS PROVIDED IN SUBSECTION (2)(B). If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics.

(2) ~~Such~~ The conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and ~~shall~~ rest approval of the conversion rests in the discretion of the division~~, both as to what the purchase price of an annuity would be, the~~ amount of ~~such~~ the lump-sum payment, and the advisability of ~~such~~ the conversion. IT IS PRESUMED THAT BIWEEKLY PAYMENTS ARE IN THE BEST INTERESTS OF THE

WORKER OR HIS BENEFICIARY. THE APPROVAL OR AWARD OF A LUMP-SUM CONVERSION BY THE DIVISION OR THE WORKERS' COMPENSATION JUDGE MUST BE THE EXCEPTION, NOT THE RULE, AND MAY BE GIVEN ONLY IF THE WORKER OR HIS BENEFICIARY DEMONSTRATES THAT HIS ABILITY TO SUSTAIN HIMSELF FINANCIALLY IS MORE PROBABLE WITH A WHOLE OR PARTIAL LUMP-SUM CONVERSION THAN WITH THE BIWEEKLY PAYMENTS AND HIS OTHER AVAILABLE RESOURCES. THE FOLLOWING PROCEDURE MUST BE USED BY THE DIVISION AND THE WORKERS' COMPENSATION JUDGE IN DETERMINING WHETHER A LUMP-SUM CONVERSION OF PERMANENT TOTAL BIWEEKLY PAYMENTS WILL BE APPROVED OR AWARDED:

(A) THE DIFFERENCE BETWEEN THE PRESENT DISCOUNTED VALUE OF A LUMP SUM AND THE FUTURE VALUE OF THE BIWEEKLY PAYMENTS CANNOT BE THE ONLY GROUNDS FOR APPROVING OR AWARDING A LUMP-SUM CONVERSION.

(B) A LUMP-SUM CONVERSION THAT IMPROVES THE FINANCIAL CONDITION OF THE WORKER OR HIS BENEFICIARY OVER WHAT WOULD HAVE BEEN REASONABLY EXPECTED HAD THE WORKER NOT BEEN INJURED OR DIED CAN BE APPROVED OR AWARDED ONLY IF THE LUMP-SUM CONVERSION IS LIMITED TO THE PURCHASE PRICE TO THE INSURER OF AN ANNUITY THAT WOULD YIELD AN AMOUNT EQUAL TO THE BIWEEKLY BENEFITS PAYABLE OVER THE ESTIMATED DURATION OF THE COMPENSATION PERIOD. THE WORKER OR HIS BENEFICIARY MUST DEMONSTRATE THE FINANCIAL CONDITION THAT WOULD HAVE BEEN REASONABLY EXPECTED, TAKING INTO CONSIDERATION HIS AGE,

EDUCATION, WORK EXPERIENCE, AND PROBABLE JOB PROMOTIONS AND PAY INCREASES.

(C) IF THE EXISTING DELINQUENT OR OUTSTANDING DEBTS ARE USED AS GROUNDS FOR A LUMP-SUM CONVERSION, THE WORKER OR HIS BENEFICIARY MUST DEMONSTRATE THROUGH A DEBT MANAGEMENT PLAN THAT A LUMP SUM FOR THAT PURPOSE IS NECESSARY TO SUSTAIN HIMSELF FINANCIALLY.

(D) IF A BUSINESS VENTURE IS USED AS GROUNDS FOR A LUMP-SUM CONVERSION, THE WORKER OR HIS BENEFICIARY MUST DEMONSTRATE THROUGH A BUSINESS PLAN THAT A LUMP SUM FOR THAT PURPOSE IS NECESSARY TO SUSTAIN HIMSELF FINANCIALLY. THE BUSINESS PLAN MUST AT LEAST SHOW THE FEASIBILITY OF THE BUSINESS, GIVEN THE MARKET CONDITIONS IN THE INTENDED MARKET AREA, AND THE CASH THAT WILL BE AVAILABLE TO HIM ON A BIWEEKLY BASIS AFTER START-UP COSTS AND OTHER BUSINESS EXPENSES ARE CONSIDERED THROUGHOUT THE EXPECTED LIFE OF THE VENTURE.

(3) IF THE DIVISION ~~OR THE WORKERS' COMPENSATION JUDGE~~ FINDS THAT AN APPLICATION FOR LUMP-SUM CONVERSION DOES NOT ADEQUATELY DEMONSTRATE THE ABILITY OF THE WORKER OR HIS BENEFICIARY TO SUSTAIN HIMSELF FINANCIALLY, THE DIVISION~~,~~ ~~OR THE WORKERS' COMPENSATION JUDGE IF THE DIVISION HAS NOT ALREADY SO ORDERED,~~ MAY ORDER, AT THE INSURER'S EXPENSE, FINANCIAL, MEDICAL, VOCATIONAL REHABILITATION, EDUCATIONAL, OR OTHER EVALUATIVE STUDIES TO DETERMINE WHETHER A LUMP-SUM

CONVERSION IS IN THE BEST INTEREST OF THE WORKER OR HIS BENEFICIARY.

~~(3)~~(4) The division ~~is--hereby--vested-with~~ has full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.

~~(4)~~(5) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination."

SECTION 2. SECTION 39-71-2109, MCA, IS AMENDED TO READ:

"39-71-2109. When employer may be relieved from liability. Any employer bound by compensation plan No. 1 against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming

interest at 5% 7% per annum, compounded annually, with the division; or

(2) ~~purchasing--an--annuity--within--the--limitations provided-by-law-in-any-insurance-company-granting--annuities and--authorized--to-transact-business-in-this-state,-subject to-the-approval-of-the-division~~ depositing with the division the sum of the unpaid permanent partial benefits for which such liability exists."

SECTION 3. SECTION 39-71-2207, MCA, IS AMENDED TO READ:

"39-71-2207. How insurer relieved from liability. Any compensation plan No. 2 insurer against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 5% 7% per annum compounded annually, with the division; or

(2) ~~purchasing--an--annuity--within--the--limitations provided-by-law-in-any-insurance-company-granting--annuities and--authorized--to-transact-business-in-this-state,-subject to-the-approval-of-the-division~~ depositing with the division the sum of the unpaid permanent partial benefits for which

such liability exists."

NEW SECTION. Section 4. Extension of authority. Any existing authority of the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 5. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. SECTION 6. APPLICABILITY -- RETROACTIVE EFFECT. THIS ACT APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO INJURIES INCURRED AND LUMP SUMS AWARDED OR PAID PRIOR TO THE EFFECTIVE DATE OF THIS ACT IF A LUMP SUM IS AWARDED OR PAID FOR THE INJURY OR THE AWARD OR SETTLEMENT IS REOPENED AND REDETERMINED AFTER THE EFFECTIVE DATE OF THIS ACT. THE MERE PASSAGE OF THIS ACT IS NOT GROUNDS FOR REOPENING ANY CASE.

NEW SECTION. Section 7. Effective date. This act is effective on passage and approval.

-End-